THE NATION

OCTOBER 4, 1971 50 cents

NOT GUILTY OF WHAT?

An Account of the Seven-Month Black Panthers' Trial in New York City, by Juror Number Four

EDWIN KENNEBECK

DEGREES IN PARANOIA

THE COLD-WAR COLLEGE

Berkeley Rice

GI ADDICTS

THE CATCH IN AMNESTY

Samuel A. Simon

●

Douglas T. Miller / 'The Birth of Modern America'

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EDITORIALS

The Draft Continues

Considering that the draft bill was before the Congress more than seven months, the resulting legislation is no prize. It was seven months of debate, amendment, parliamentary maneuvering and, on the part of the Administration, high-pressure lobbying, arm-twisting and seduction. After all this, what have the taxpayers, and the fathers, mothers and sons of the nation got for their tax dollars and whatever time they spent in following the proceedings—which at times became so involved that the legislators themselves, much less the political laity, could hardly make head or tail of the whole business?

The pay and allowances of servicemen are to be increased by $2.4 billion a year, but only part of that this year, since three months of fiscal 1972 have gone by and the wage freeze will defer the raises at least until November 13, and perhaps longer. Then, the bill expresses the "sense of the Congress" that the President should withdraw all U.S. forces from Indochina by "a date certain," but it does not specify the date and adds that the withdrawal is subject to the release of all American prisoners of war. The President, we know, does not stand in awe of the "sense of the Congress," and does this provision bar him from using in Indochina air units based on Thailand, or on carriers off the coast?

The bill abolishes student deferments for men who enter college for the first time after the regular 1970-71 school year; thus this year's freshmen are out of luck, unless their lottery numbers are about 125, or higher. Others retain their deferments till the end of their fourth year in college or their 24th birthday, whichever comes first. No more than 130,000 men may be drafted in fiscal 1972, and no more than 140,000 in fiscal 1973, unless Congress authorizes higher totals. For the present fiscal year (1972) the average strength of the armed forces is set at 2.5 million. Quality, of course, is as important as quantity, and the President is given authority, which he says he will use, to pay bonuses of up to $3,000 to men who enlist in combat specialties.

If one probes below the surface, politics, in both good and bad senses, sticks out all over this bill. It continues conscription until June 1973. Specialists in military personnel differ on whether the pay raises will induce enough men to volunteer so that the draft will not be needed. If this goal should be reached prior to November 1972, what a windfall for a President seeking re-election! Mr. Nixon has said that his goal is to end the draft, but to get the votes he must do more than say it. His chances do not appear too good. Lieut. Gen. George I. Forsythe, who is in charge of the effort to achieve an all-volunteer force, is of the opinion that the draft will have to be continued even after the expiration date specified in the bill. However, the fewer men drafted between now and next year's elections, the more benefit may be expected to accrue to Mr. Nixon. And also to the Army, since the disaffection and indiscipline which are rife in the ranks come almost entirely from draftees.

From the beginning, the debate over the draft has centered not only on conscription in general but on the Indochinese war and Mr. Nixon's policy of balancing troop withdrawals with intensified air action. An amendment sponsored by Senator Mansfield would have declared our policy to be that all American troops would be withdrawn within nine months after the prisoners of war were released. Senator Mansfield and his supporters fought hard for this time limit, but the Administration brought up its heavy guns and managed to defeat it. The end, however, is not yet. The next legislation pending before the Senate is the military procurement bill, and Mr. Mansfield intends to try to append his timetable provision to this money bill.

The Senator is also trying to curtail American militarism on the other side of the world—cutting the size of the U.S. force in Europe from 300,000 to 150,000 men. The Administration balked him on that also, but the international monetary situation may facilitate his future efforts.

Various other provisions of the bill seem to be unobjectionable, although the bill as a whole is no great feat of legislative achievement. One clause is perhaps deserving of muted praise. Draft boards tend to be overloaded with aging veterans of past wars who are proud of having performed a patriotic duty, and who feel that young men benefit morally by military service. The maximum period of service for draft board members has now been shortened from twenty-five to twenty years—a slight improvement. The maximum age is now 65 and the minimum 18. One wonders how many 18-year-olds will be asked to serve, or, for that matter, how many 21-year-olds have served in the past.

Nixon's Court

Justices Hugo Black and John Harlan have resigned from the Supreme Court and it is expected that, also because of ill health, Justice Thurgood Marshall will soon follow them into retirement. If it should turn out so, Mr. Nixon will have an opportunity to make more Supreme Court appointments in one term than has any President since Franklin Delano Roosevelt.

It is ironic, not to say disturbing, that a President who (while repeatedly calling for law and order) has shown disrespect for the processes of the law, and particularly for the constitutional rights of American citizens, should be given so free a hand to shape the characteristics of the highest Court. It is unfortunate, not to say alarming, that his adviser in this area is an Attorney General whose legal experience has been almost exclusively in the area of corporate affairs, and who himself shows contempt for the concepts of civil rights and civil liberties.

But the fact is that Mr. Nixon had already attained his goal as far as the Supreme Court is concerned. With the appointments of Chief Justice Warren Burger and Justice Harry Blackmun, and with the growing conservatism of Justice Black in recent years, he could expect that a majority of the Court would share his views on most major issues. Any further Right-of-Center appointments will be in the nature of overkill.

The chances are that he will again look to the South for one or more of the candidates—and indeed, since Justice Black is from that area, he can find good precedent for doing so. Nor is there any reason why he should not—there are excellent jurists to be found in the South, among them, to cite only one example, John Minor Wisdom, judge of the United States Court of Appeals, Fifth Circuit, in New Orleans. But Judge Wisdom, an

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Eisenhower appointee, has had a career on the Appellate Court that somewhat parallels the development of Chief Justice Warren on the Supreme Court, and Mr. Nixon's earlier appointments (and attempted appointments) do not suggest that he will be searching for that sort of man. More probably, he will now look with favor on amiable lightweights, men about whom there will be little to criticize because there will be little in their pasts to elicit any strong reaction. One may be reasonably confident that no skeletons will come popping out of closets—twice burned, the Justice Department can be expected to spare the President serious embarrassment this time.

Indeed, Mr. Nixon's hand is now so free that he just may make one blue-chip appointment—perhaps a scholar from one of the law schools or a judge from one of the lower benches with really strong credentials. That would fit into the "good" image that Mr. Nixon is now so assiduously building with November 1972 in mind. If so, we shall be grateful for small favors. The peculiarly galling aspect of inferior Supreme Court appointments is that the citizenry must endure them for years after it has sent into obscurity the President who perpetrated them.

An Army at Sea

Some months ago an anonymous American general was quoted as saying, "I'll be damned if I let the traditions of the U.S. Army go to hell to win this lousy war." What the general feared has come to pass. Donald Kirk's article, "Who Wants To Be the Last American Killed in Vietnam?" in the September 19 *New York Times Magazine,* leaves no doubt on that score, and it is only one of several reports to confirm the disintegration. It is no longer a question of winning the war but of saving face through Vietnamization and half-hearted ground action by American units, while air and artillery support continue undiminished. To the ordinary GI this Nixon-Laird-Kissinger policy makes no sense, and he acts accordingly.

Kirk paid extended visits to the once proud Americal and 101st Airborne divisions in Military Region One, south of the DMZ. He divided his time between the combat zones and the rear areas. Up front he found the average soldier's life "a daily hassle to avoid patrols, avoid the enemy, avoid contact—keep out of trouble and not be 'the last American killed in Vietnam.'" In the rear he found widespread use of drugs, with the usual accompaniments—theft ranging from stereo sets to food from the mess hall with which to buy heroin, which in some cases was being peddled by South Vietnamese soldiers. Addicts occasionally resort to fraggings—assaults on zealous officers with grenades—and blowing up orderly rooms. Threats of fraggings are much more numerous than the real thing. The usual warning is to leave a grenade pin on the officer's or noncom's pillow. One conscientious black NCO, a formidable boxer and judo expert, had lost count of the grenade pins on his pillow and the verbal threats. In the battalion to which he belonged some twenty out of 100 men were constantly too high and too weak to perform any duty at all. Up front, on the contrary, there was very little use of drugs. Although combat duty is much less dangerous now, the men would not stand for drug addiction, since it endangered the whole unit.

Kirk soon became aware of the reason for the current

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low U.S. casualty figures. It is not only that the "grunts" don't want to fight; it is also, as Kirk writes, that "the U.S. command now emphasizes low American casualties with the same enthusiasm that it once accorded . . . enemy body counts. . . . Specifically ordered to hold down casualties, commanders rarely invade traditional enemy base areas among shadowy crags and valleys to the west—and carefully disengage from battles in the lowlands if heavy losses seem inevitable or even conceivable."

For their part, the majority of the troops do not object to the war on moral grounds; they simply feel that it is useless and that they are being victimized. An Iowa farm boy complained to Kirk that since we failed to invade North Vietnam, H-bomb Hanoi and Haiphong and declare VC hamlets "free fire zones," "we oughta quit wastin' time and go home." Another rifleman, this one from Georgia, said, "The dinks are just playin' with us, waitin' for us to go home, then they'll beat the —— out of the ARVN." A captain told Kirk practically the same thing, in more elegant language. If President Nixon and Mr. Kissinger really believe that Vietnamization is working, or ever will work, they might benefit by some uninhibited conversations with men who have never written for *Foreign Affairs* but who have seen the war at first hand.

Dollars for Dick

The Republican National Committee—so we learn from a mailing piece sent to a senior member of our staff who has been a registered Democrat since the age of 21—is peddling Eisenhower silver dollars at $15 a throw. It will be interesting to see whether that has any appreciable effect on Mr. Nixon's attempts to stem inflation.

Probably not, since the sales pitch that accompanies this dubiously attractive offer is as convincing as the announcement of a new cure for baldness. Starting from the proposition that "as President and as the leader of our Party, Richard Nixon has justified Dwight Eisenhower's faith in him" (which may well be true, if backstairs reports on the fervor of the old General's faith are accurate), the copy goes on to assert that the 1972 campaign of the GOP stands in "grave danger of being overwhelmed by the union-supported war chests" of the Democrats and that the Republican strategists are "totally dependent upon the contributions of individuals like yourself. . . ." The relative financial positions of the two major parties are public knowledge; the Democrats are broke and the Republicans are gloating over their advantage. A voter would have to be a very loyal Republican to pay fifteen bucks for a cartwheel, even on reading a covering note from Mamie Eisenhower saying she is so glad he has been given the opportunity.

We wonder if Mrs. Eisenhower has taken a good look at the coin in question. The head is a portrait of her husband only in the sense that if you are told whom it represents you are not absolutely prepared to deny it. Uninstructed, we would have said it was probably an astronaut. This would have been confirmed by the fact that, on the obverse, the American eagle is seen deserting the earth and touching down on the moon. It is true that the species has been vanishing, but the symbolism seems to us awkward. And so does the implied slogan of the GOP for 1972—"Fifteen dollars gets you one."

Mene, Mene

A small news item in *The New York Times* of September 21 caught our eye, not because it was particularly surprising but because of the tone. On the previous Thursday, thirty-four junior high school football players had been incapacitated in Piscataway, N. J. The young athletes were stricken during a practice session, and it was thought at first that the cause was a pesticide that had been sprayed on the field. However, boys at play were similarly afflicted with nausea, chest pains and spasms in at least nine other north-central New Jersey communities, and the next day the Piscataway health officer blamed "an unusual combination of high pollen and high humidity."

Later, the State Health Department, after checking pollen counts in the region and taking blood samples from the afflicted players, reported that the true cause was "high concentrations of oxidants in the atmosphere." In short, these boys, playing football over a large section of New Jersey, were poisoned by the air they breathed. A Health Department spokesman said further: "We were on the verge of a temperature inversion." Then, remarks the *Times*, "the weather changed Friday and the pollutants were blown away." It concludes the story by explaining, for the benefit of its more inattentive readers, what causes a temperature inversion.

Of course, the pollutants were not "blown away"—they were merely blown somewhere else, probably to a permanent orbit in the high atmosphere. And heat inversions are a recurring feature of the climate. Under the circumstances, the health authorities of New Jersey and *The New York Times* contemplate the sight of healthy children falling stricken on their playing fields with an equanimity that says more for their nerves than for their foresight.

Down the River

On one picket line, manned by some 200 editorial employees at the *Newark News*, New Jersey's proud old newspaper of record for three generations, the wage issue had already become more or less incidental by the time President Nixon's wage freeze hit the labor movement. On the *News*, the big struggle had shifted to the survival of the employees' newly organized union.

With the announcement in mid-September that the paper's plant and Sunday edition were being sold to the rival *Newark Star-Ledger*, the survival of the *News* itself had suddenly become a serious question. The Guild unit, still toddling along in its swaddling clothes when its members went out on strike last May 26, was the product of a change in climate that had filtered into the city room and bureaus after the paper's founding family sold out to a brusque, businesslike conglomerate, Media General, Inc., of Richmond, Va. Fifteen years earlier, during a fleeting season of discontent, a Guild organizing attempt had fizzled at the *News*, the victim of years of benevolent paternalism. Now, in 1971, tough talk from Richmond raised the specter of staff cutbacks. This time the organizing call proved successful, with job security and pay the primary issues. But, as the pickets marched and negotiations faltered, a more compelling question arose: Could this—or any union, for that matter—withstand the pressures and

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resources of a conglomerate determined not only to block new unionization but possibly to clip the wings of existing unions?

The probability that it could not began to haunt the paper's seven craft shops, upon whose observance of the Guild picket line the strike depended. On the 107th day, neatly past the summer doldrums every newspaper publisher dreads, they caved in. Caught in the collapse of this at best shaky solidarity, the new Guild found itself with an empty agreement permitting unlimited layoffs and no severance pay.

When Media General acquired the paper a year before (almost, it seems, as an incidental extra in the purchase of a booming newsprint reclamation mill), it discovered that it had embraced a property high in reputation but low in earnings. Further, it had inherited a staff it considered larger than necessary (though with the offsetting virtue of being nonunion and low paid). Semi-fictitious expense accounts and scavenged overtime, traditional supplements to the anachronistic *News* editorial pay scale, were early victims of the new regime's overhaul. For editorial employees, it was, in effect, a severe pay cut, and there was still the matter of job security. Richmond was the place to look for the handwriting on the wall.

There, thanks to the "heroic" typesetting services of the wives of the publisher and the corporation president, and of the publisher himself, Media General had broken a strike by union printers. Back in Newark, as Guild members tentatively approved the contract proposal at an emotional meeting on the 107th day, a veteran reporter sought to console her co-workers: at least, she sighed, Media General had not destroyed the union; at least, she said, there *was* a union.

But the capitulation by the Guild did not, as anticipated, signal the end of the shutdown and a return to "normalcy." Within days, Media General announced what many had feared for months, but few believed: the sale for $20 million of *The Newark Sunday News* and the *News* plant to the *Star-Ledger*. For many of the craft unions—the same unions that had caused the Guild to give in on company terms—it meant a brutal loss of jobs. And it added credence to rumors of Machiavellian plotting by management, with the crafts as unwitting men in the middle. Even more troubling is the fear that the company may find a way to skirt the antitrust prohibitions, publishing the daily for a while, then pronouncing it a loser and—under the shelter provision of antitrust regulations—completing the handover to the *Star-Ledger* and giving the Newhouse chain an open field for morning, evening and Sunday operations.

The lesson, for editorial and production employees alike, seems clear: as family-owned newspapers slip into the control of nonbenevolent, super-cost-conscious corporations, old balances between employee and employer are being drastically altered. Separate unions for separate crafts become a dangerous luxury, inviting whipsaw manipulation and an eventual total drain of effectiveness. It may be that the plant-wide, single-union concept of the old CIO is the answer for those whose working lives are invested in newspapers. Courage is no substitute for solidarity when newspapermen take on a powerful, well-heeled, impersonal opponent like Media General.

DAVID C. BERLINER, *Newark News*

Nixon's N.E.P. & The Constitution

ARTHUR S. MILLER

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The Economic Stabilization Act gave the President ". . . a tremendously broad power. It would give the President virtually dictatorial power." So said Arthur Burns, chairman of the Federal Reserve Board, when testifying early this year before the subcommittee on Financial Institutions of the Senate Committee on Banking, Housing and Urban Affairs. He echoed that theme before the Joint Economic Committee: the statute would give the President "too much power"; "you are giving dictatorial powers to the President and you ought to do that with the greatest of caution."

Burns's remarks take on added piquancy, now that President Nixon has reversed his economic game plan and embraced "temporary" price and wage freezes, plus controls over imports and the dollar in international exchange. According to the newspapers, Burns was among those pushing hardest for an "incomes" policy to combat inflation. The economic merits of what the Chief Executive did have been discussed in a previous issue ("Watershed or The American Economy" by David Deitch, September 13). Few have even mentioned, in the hosannas that greeted the new Nixonomics, certain basic constitutional questions which deserve debate before laws and attitudes become so solidified that they cannot be altered.

Any careful analysis of the Presidential programs must lead to the conclusion that, at the very least, they are of dubious constitutional validity. The wage-price freeze can be questioned both in general and in detail, and the import surcharge is quite clearly contrary to the General Agreement on Tariffs and Trade (GATT).

Under the Economic Stabilization Act of 1970 the President is authorized "to issue such orders and regulations *as he may deem appropriate* to stabilize prices, rents, wages, and salaries at levels not less than those prevailing on May 25, 1970." "Gross inequities" may be adjusted. Willful violations of an order or regulation are punishable by fines of up to $5,000, and injunctions may be obtained to enforce them.

That is the statute which Arthur Burns warned against and which Mr. Nixon himself said he did not want. Other Administration spokesmen faithfully followed the White House line that controls would, as the President put it, "do far more harm than good." And as late as last July

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28, Paul McCracken, head of the Council of Economic Advisers, belabored J. K. Galbraith in *The Washington Post* for advocating wage and price controls. McCracken is now a convert, as are other executive officials.

When passing the Stabilization Act, Congress, for whatever reason, gave away not only the ball game but the entire ball park. It conferred almost unlimited discretion on the President and his aides to govern economic affairs, subject only to the one limitation that prices, etc., not go below those of May 1970. That, in legal terms, poses the question of "delegation of legislative power"—a separation of the powers issue that has had uneven treatment by the Supreme Court.

In spirit, the Constitution calls for *general* policies to be set by Congress, with implementation left to the Executive and the bureaucracy. However much the principle has been breached, mainly in foreign affairs, it is still on the books. Briefly, Congress may carefully delegate its legislative powers, provided that the delegation is confined by "an intelligible principle." Is that true here? Hardly: no guidelines limit the President's authority, save that he must observe the May 1970 floor. Congress did not even define "stabilize"—leaving that to the Executive.

The question of whether legislative powers can be delegated came to issue in 1935, when the Supreme Court in two cases shot down the National Industrial Recovery Act. The Act, said Justice Cardozo, was "delegation running riot." The decisions, *Schechter Poultry Co.* v. *United States* and *Panama Refining Co.* v. *Ryan* (often called the "Sick Chicken" and "Hot Oil" cases), mark the only times that the Court ever outlawed delegations to permanent federal agencies. Since 1935, many transfers of power to the public administration have been made on extremely vague, even nonexistent grounds: an example is *Lichter* v. *United States,* which upheld renegotiation of war contracts legislation, designed to recover "excessive" profits. Congress had not defined the term. As late as 1967, in *United States* v. *Robel,* which was reargued at the request of Justice Brennan, the Court found without difficulty that a delegation to the Secretary of Defense of authority to designate "defense facilities" met the *Schechter-Panama* test. Again, Congress did not define the term.

But these decisions, and others like them, run to only *limited* segments of the economy. They indicate what Congress wanted done, even though the chosen language is imprecise. In the 1970 Act, on the other hand, Congress set forth no policy other than the undefined goal of "stabilization." Except in wartime, no such sweeping power to govern the entire American economy has been ceded by Congress since the NIRA of 1933—which the Court did invalidate. It is a blank check, bad on legal and on policy grounds—an economic Gulf of Tonkin resolution.

War powers which were used in World War II and in Korea to validate economic controls do not apply now. (The Virginia supreme court has just held that Vietnam is not a war for insurance purposes.) In fact, neither the President nor Congress has made an effort to rely on that nebulous congeries of powers. The best that can be found to provide a constitutional basis for the statute is the power of Congress to regulate interstate commerce, so broadened in the last three decades that it now encompasses about everything that is even remotely connected with interstate commercial activities. A little-noticed decision in the spring of 1971, *United States* v. *Perez*, upheld the power of Congress to make local loan-sharking a crime —about as far as can be gone. But while that may settle the elementary question of power, it does not touch the problem of delegation. The *Schechter* and *Panama* decisions are still on the books, rattling around in the attic of constitutional law even though the Supreme Court has had numerous opportunities expressly to overrule them. That the Justices did not do so may possibly indicate that the choice was deliberate, that the concept may still be used. Prof. Louis L. Jaffe of the Harvard Law School said in 1965 that *"Schechter* prods Congress into awareness of its responsibility for bringing major policy decisions into focus." Congress has not done so in the present instance.

Far-reaching and possibly permanent steps surely should not be taken without full public debate. By making his change of economic policy on August 14, in apparent haste and secrecy, when Congress was not in session, Mr. Nixon showed scant respect for the spirit of the Constitution—even though Congress had made his actions possible. I do not suggest that new economic measures were unnecessary; something doubtless had to be done about inflation and unemployment. But was it essential to clamp down on the entire economy?

The wage-price freeze raises at least two further basic constitutional problems. These deal with particular sectors of the public: (*a*) those who had agreed before August 14 to contracts for pay increases to come after that date, and (*b*) employees of state and local governments.

Existing contract rights are abrogated for those who had contracts entered into prior to August 14. No case to my knowledge permits the federal government so to alter the obligation of a contract. Under the Fifth Amendment, no property can be taken without due process of law, and just compensation must be paid for property taken by the government. Contract rights are property rights in the eyes of the law.

In 1934 the Supreme Court held in the *Blaisdell* case that Minnesota's mortgage moratorium law was valid because it merely altered the remedy but not the obligation of contracts. Government lawyers, however, today rely on a 1965 decision, *El Paso* v. *Simmons,* as authority for stopping already concluded pay hikes. In it, Texas was permitted to alter a term in a contract allowing a purchaser of state land, upon payment of delinquent interest, to reinstate ownership. For various reasons, the Court found only a technical alteration of a contract—far from the situation on salary raises agreed to before August 14. *Simmons* is not even superficially on point, and the controlling case is still *Blaisdell.*

Again, Congress' war powers cannot be used to uphold the expropriation of contract obligations. As Chief Justice Warren said in the *Robel* case, "the phrase 'war power' cannot be invoked as a talismanic incantation to support any exercise of Congressional power which can be brought within its ambit. 'Even the war power does not remove constitutional limitations safeguarding essential liberties' " (citing the *Blaisdell* case). The conclusion seems entirely

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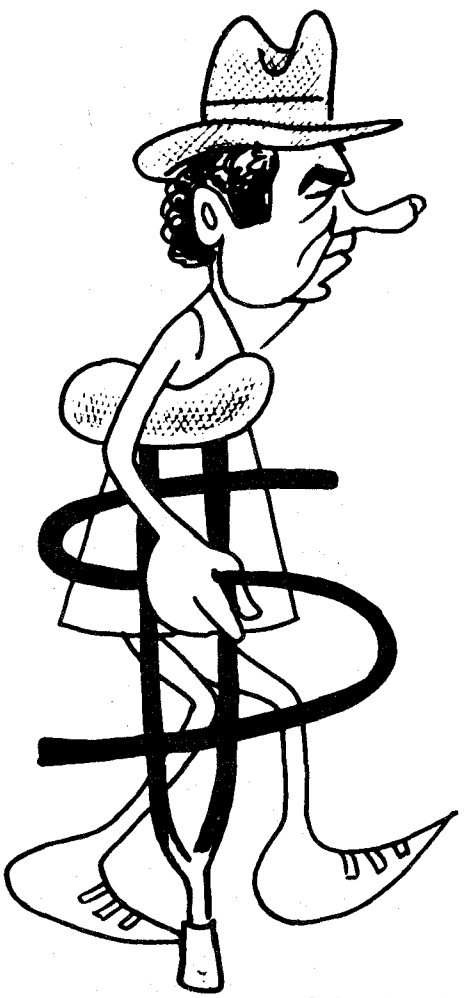
clear: orders issued by the Cost of Living Council, denying teachers, for example, their scheduled raises in September, are invalid. Those orders effectively confiscate contract rights without paying compensation.

As for state employees, Gov. Preston Smith of Texas may well have been on sound legal ground when he challenged the power of the federal government to deny raises to Texas schoolteachers. Smith backed off, it is true, but if federalism means anything, it means that there are limits to federal regulations of state governmental activities. And that is so even though the Supreme Court, in *Maryland* v. *Wirtz* (1968), decided that the fair labor standards act applied to state employees. The thrust of recent constitutional law is toward according a higher degree of respect for what Justice Hugo Black last year called "our federalism." It is at least arguable—to me, it is persuasive—that the states can safely ignore the federal mandate. That some school boards so believe may be seen in the announcement that Westchester schools in New York would grant salary increases, an action paralleling that of President George Williams of American University in Washington. (That, by the way, seems to be good legal stratagem, for it forces the government to move against the school and the university.) State officials can rely on both the contract argument and the federalism argument.

There are other reasons why the wage freeze can be challenged. The orders issued by the Cost of Living Council tend to be ambiguous at best. *The New York Times* reported on September 6 that contradictory rulings were being sent out of different Internal Revenue Service offices throughout the country (oddly, the IRS "administers" the statute). Council regulations may be said to be "void for vagueness," in that criminal sanctions are imposed for conduct that one cannot know in advance to be prohibited.

Furthermore, the orders of the Council are issued in a summary fashion without allowing those affected to be heard. That violates the procedural requirements of due process. Also, section 4 of the Administrative Procedure Act of 1946 requires that notice and opportunity for hearing precede "rule making" by administrative agencies on matters that affect "interested persons." No attempt has been made to follow that statute. This is not to argue that a full-dress hearing should be held before any order is issued, but something should have been done; formalisms are not humbug. Why the rush? This is not 1933 or 1942; there was no obvious critical emergency to necessitate short-cutting normal legal processes. Obviously, the President caught not only the country but his own Administration by surprise, for since August 14 the norm has been chaos and confusion. That will be compounded unless someone—Congress?—requires that a deep breath be taken and lawful procedures followed.



Backes (Nuremberg)

There can be no doubt that the 10 per cent surcharge on imports violates the GATT. As the London *Economist* put it, "The surcharge breaks almost every rule in the agreement and the United States admits it." Of even more importance is the reversion to an economic "Fortress America." Some commentators, to be sure, maintain that the surcharge is merely a "technical" violation of GATT, since import quotas could have been validly imposed.

But the critical matter is the policy of economic nationalism. Only a short time ago Americans who called for immediate withdrawal from Vietnam were castigated as "neo-isolationists" by Administration spokesmen. That is precisely what the surcharge is. Together with the dollar "float," it comes at the very moment when purely *national* economic programs cannot and will not work; and when they are being replaced by larger-than-national institutions (such as the OECD, the Common Market and the multinational corporations). The surcharge, plus the demands that other nations revalue their currencies (so as not to saddle the President with an overt dollar devaluation), means economic disequilibrium between nations. (That the dollar was devalued in fact should be obvious to everyone not imprisoned, as are Washington bureaucrats, in Orwellian semantics.)

The surcharge was legally "justified" by the ill-famed Smoot-Hawley Tariff Act of 1930, plus, said the President, his powers under the Kennedy trade expansion act of 1962. In addition, a national emergency was declared. That poses a final constitutional question about the N.E.P.

Does an emergency announced by the President or by the Congress (either directly or by delegation to the President) add to the constitutional powers of the national government? This is *terra incognita* in constitutional law. True, in such situations as World War II, emergency powers were used, as Clinton Rossiter has said, in a form of "constitutional dictatorship." But no one has said that

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1971 is to be equated with 1942, or, for that matter, with 1933 when the depression was at its depth.

Emergency, however defined and if recognized, does not add to powers of government, said the Court in the *Blaisdell* case; it merely gives an occasion for their use. Judges are reluctant to intervene in such matters, but government by emergency power—we have lived continuously under one declared by President Truman in December 1950—is part of a growing package of government by Executive decree or fiat. The American people ought to be very sure that they want to travel much further down that perilous road.

The new Nixonomics reveals again the peril of a pragmatic approach to government. Loosed by the President's policies are forces that will not be easily cabined. Temporary measures may well become permanent, "somewhere short of infinity," in the words of *The Wall Street Journal*. Surely we are entitled to more from our governmental leaders, executive and legislative, than an ill-conceived set of programs that, without fanfare or previous announcement, change the nature and character of government. Arthur Burns was right, if the program continues and is upheld: it does give "dictatorial powers" to the President. Justice Jackson said it well in the *Steel Seizure* case (1952), invalidating President Truman's take-over of the steel industry during the Korean War: ". . . with all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations."

Not that there is much hope that members of Congress will respond. Sen. Russell Long may have loosed the cat when he said, after the President reversed his field once again on September 9, that the President and George Meany ought to get together and work out post-freeze controls. Who elected Meany to public office? □

BLACK PANTHERS IN NEW YORK

NOT GUILTY OF WHAT?

EDWIN KENNEBECK
Mr. Kennebeck is an editor of The Viking Press.

It is a rainy afternoon, May 13, on the 13th floor of 100 Centre Street, Criminal Court Building, New York City. Again the number 13: the New York Black Panthers are on trial.

The jury retires for deliberation at 1:30. Court officers bring sandwiches and soft drinks into the jury room (beer not allowed), and a large coffee urn; they knock on the door, unlock it from outside, say "Stop deliberating, please," deliver their goods, leave and lock. At about 4 P.M. one of the jurors, Stephen Chaberski, knocks on the door from inside. The court officer unlocks, opens, says, "Stop deliberating." Chaberski says, "We have. We've got a verdict."

In the courtroom, about half an hour later, the jury foreman, Ingram Fox, speaks over the cries and gasps of the defendants and their friends, answering "Not guilty" 156 times to the twelve identical charges against each defendant. Not guilty of a revolutionary conspiracy that was supposed to have been in the works between August 1, 1968 and April 2, 1969. It is a stunning conclusion to a long trial; there are big headlines in the New York papers, jurors are invited to comment on radio and television. A party that evening was a minor scandal in a city of scandals: the jurors embraced defense lawyers—and defendants.

But there had been another scandal. When we jurors walked joyously into the courtroom to deliver our verdict *I* was stunned to see a wall of guards standing behind the defendants, between them and the spectator section. Ordinarily, during the seven months of the trial, thirteen guards had been seated in an L-shaped row behind the defense tables. That afternoon, what had become a rather routine *mise en scène* was hyped up to super-theatre. The blue of the guards' uniforms at that moment was the color of fear. I stared at them and felt important.

What had Judge John M. Murtagh (New York State Supreme Court) been thinking of when he ordered this mighty fortress of protection? Who was to be protected from whom? I heard later that a roomful of men from the Tactical Patrol Force had also been on hand and I saw in a newspaper that we were to have been given dinner at a restaurant across the street from the courthouse in the company of eighty-four guards. What a feast that would have been. Anyhow, did Judge Murtagh expect a guilty verdict, followed by riots? Or did he—experienced in the significance of both swift and lengthy deliberations—sense that we had acquitted, and expect at last the revolution?

To do *him* justice, I think His Honor was remembering the Marin County courthouse in California, where a judge and juror had been killed. Very likely he at least felt the vibrations, the atmospheric charge, of this final moment of a trial that was, in effect, and despite his and the District Attorney's disclaimers, a New York State black-versus-white combat.

Most of the defendants had been arrested in their apartments at 5 A.M. on April 2, 1969. After two years the jury found—that we needn't have had this trial.

The workings of grand juries are a mystery to me, as I suppose to most citizens. One reason that I find them puzzling is the number of other Black Panther trials that have ended more or less "happily." The hung jury in the trial of Bobby Seale and Ericka Huggins in New Haven, and the judge's dismissal of it on May 25, 1971; the acquittals in Detroit on June 30 and in New Orleans on August 6; the case of five Panthers in New York City

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who were acquitted of conspiracy charges on the same day that our trial ended. It seems to be a fad.

Publications such as *The New York Times* and *Life*, instead of writing editorials congratulating us all on a triumph of justice for thirteen bad blacks, might have asked some questions about how a grand jury was persuaded in this case to bring the thirty-count indictment, which at the end of the trial got pared down to twelve counts, which we threw out with the ease of a teeny-bopper tossing away chewing gum. Thirty counts originally—the newspapers had been emphatic about them. That's another field for investigation: the newspapers, just doing their job by reporting what the police and the district attorneys say at the time of accusations, but not able to report the "other side," the defendants' side, because there is no organized defense. And in the course of such a trial do the newspapers or television give a fair version of defense evidence and rebuttal? It is far from probable.

The papers and networks did make big news out of our verdict. But a reader of *The New York Times* (for example) could not have gained anything like an adequate picture of why we acquitted the defendants. The *Times* reporter, Edith Evans Asbury, deemed it unnecessary to write in detail about the contradictions and flimsiness of the prosecution testimony and evidence. Other newspaper coverage may have been more fair, but by the nature of news publishing it could not have been even nearly complete. The *East Village Other* (Jackie Friedrich) and New York's listener-sponsored radio station WBAI (Margo Adler and Miss Friedrich) seem to have been among the few "media" that covered the trial adequately. If the editors of *Life* and of the *Times* had read or heard them with some regularity, the verdict might have generated different editorial comment.

Was the trial a triumph for American justice? In my view, a trial that ends in acquittal may be a triumph for justice if the accusations have been based on strong evidence fairly gathered and presented. That was not so in our case. The grand jury is supposed to make sure that the evidence is strong enough and is fairly presented. The Panther 13 trial is the only one that I have ever attended, its jury the only one on which I have ever served; that puts me on a par with many citizens. On the basis of this experience, along with what I have read and heard about other conspiracy cases—the Chicago 7, the Spock trial in Boston, the Harrisburg 8—I am moved to question, with puzzlement and fear, how a body of citizens decides to bring such severe indictments.

The man who prosecuted our Black Panthers was Manhattan Asst. Dist. Atty. Joseph A. Phillips. My impression at the start had been that he was a pleasant man —under 40, heavyset, with blue eyes, wearing conventional (almost priestlike) dark suits. He told us in his opening statement about the intricate, ferocious conspiracy that the defendants—two of them women—had cooked up. Mainly, the picture was that the thirteen, at meetings of their revolutionary organizations and on more casual occasions, had agreed to kill policemen; set off explosions in police precinct stations, department stores, subway stations and railroad yards; and, of course, to possess weapons.

Incidentally, as I understand it, one difference between possessing weapons and conspiring to possess them is that, *if* the jury finds there was a conspiracy, any member thereof can be considered as guilty as all the others, even if he (she) doesn't know all the others and played only a minor role. The metaphor of a minor actor in a play who shares equal credit with the major actors seemed to be one of the judge's favorite ways of explaining the law. But he did not press the idea—important to most actors—of top billing for stars.

The trial began with the district attorney's picture of the crime; it ended with our own pictures. I can't speak for the other jurors entirely; the impressions among us varied, although they all failed to match the D.A.'s. My picture includes several confused, if not lying, police witnesses; the D.A.'s misuse of his powers, under conspiracy law, to select dubious, allusive evidence (physical objects such as books, as well as comments by the Panthers) because his imagination could draw conclusions from it; and a judge who, while perhaps making an effort to be fair, held absolute assumptions about society and individuality. I have little doubt that Mr. Phillips and his very competent assistant, Jeffrey Weinstein, also share those assumptions: if you are a woman who is pregnant by a man who is not your husband, you're no good. If you couldn't make it in the Army, no good. If you have a record of arrest, get thee behind me.

Cutting across these assumptions, curiously, was the fact that one police agent said he had smoked marijuana with the defendant and had had sexual relations with some of the women they knew. That was Ralph White, who told us he did those things "to protect my cover"; it left us wondering why the other two major spies did not.

Describing the D.A.'s picture may falsely make the charges seem concrete, and could raise too many of the kind of niggling details that extended the preposterous trial to such a length. But a brief attempt might be of some value for many who wonder how police officials deprived these Panthers of two years of freedom which cannot be restored.

Shoot-Out. One of the baffling witnesses—not a spy—was black Patrolman Roland McKenzie, who unwittingly became involved in one of the "master plots." He told us that he had taken part in a shoot-out just off the Harlem River Drive on Friday night, January 17, 1969 —at about nine in the evening. McKenzie and a fellow patrolman pulled their car off the highway and saw a red Dodge Dart already parked some yards from the road. They got out and walked over to two black young men who were standing near the open car trunk—all this according to the policemen's stories. The two blacks, known as Kuwasi Balagoon and Sekou Odinga (they were not present at the trial), began firing at the cops. The cops fired back; the D.A. showed us photographs of bullet holes in the red car to prove *that*. He also showed us a couple of spent slugs (twisted leaden caterpillars) from the patrolmen's revolvers; it seemed odd to me that bullets shot at defendants were to be considered as evidence against them; onward through the looking glass. The two young men ran off into the winter night. McKenzie and his colleague found a rifle in the red car's trunk, along

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with three or four or five bullets (the testimony on this matter was discrepant).

They also found a 17-year-old black girl, defendant Joan Bird, on the floor in the front of the car. They pulled her out and took her to their precinct station, the 34th. At the station, McKenzie noticed that the leather summons pouch on his left hip had been pierced by a bullet: there were two holes in it.

Dynamite. At about the time of the "shoot-out" there had been a small explosion directly across the Harlem River, at the 44th Precinct station, which stands in plain view of the place where the red car was parked. It stands in even plainer view for anyone who climbs a wooded slope behind the spot. There are some rock outcrops up there, from which a sniper might be able to sight in on policemen as they came out of the station across the river.

The D.A. brought to the courtroom a Police Department surveyor and map maker who displayed a large, simplified chart of the area around the red car, including the river and the 44th Precinct house. On the map where the slope was indicated, the surveyor had drawn a circle. He said that it indicated the most prominent and convenient of several rock outcrops in the vicinity.

What was it that exploded and broke a few dirty windowpanes (we were given fragments of the glass to examine) at the back of the 44th? According to the prosecution, it would have been a powerful load of dynamite if a brave and wily secret agent had not played a trick on the conspiring Panthers by substituting fake dynamite two nights before.

There had been another explosion in Queens at almost the same time, which damaged a wall and window of a school building; that one, policemen told us, had evidently been caused by one real stick of dynamite, along with the same kind of fake material.

A policeman from the 25th Precinct in Manhattan told us that on January 19, scouting around the backyard of his station, he had found something he thought was dynamite lying in a paper bag near the building. The fuse had been partially burned. He carried the package into the station and called the Bomb Squad. The sticks turned out to be made of the fake material. One witness said he heard defendant Michael Tabor (Cetewayo) say that the package had been lying behind the 25th for two days—which would make the placing of it coincide with the other two bombing attempts.

The agent who was said to have tricked the Panthers was Ralph White, now a detective, a Harlem-born man 31 years old. He was handsome in a Mephistophelian way, with mustache and goatee, usually wearing snug trousers and an elegant sports jacket—his detective badge pinned on the left pocket—with extraordinarily bright, good teeth that he frequently showed in uncalled-for smiles. He was in the witness box for many weeks, telling us about his adventures.

In January 1969, White had been pursuing a triple role as a zealous Black Panther, a police spy and an Office of Economic Opportunity employee. He had been hired by an OEO woman named Shirley Jones to direct the Elsmere Tenants Council, with offices in an old one-story building in the Bronx. Defendant Lumumba Shakur, although he was White's boss in the Panther Party, was one of his employees at the Elsmere office. The staff also included Mshina (Thomas Berry), an alleged co-conspirator in the case, who was not present at the trial, having fled—presumably to Algiers.

In January 1969, Lumumba Shakur's wife Afeni, another defendant, taunted White, accusing him of being a secret agent. To "prove" that he wasn't, White, who seems to be a volatile man, walked into a back room of the building and fired his revolver a couple of times into some table tops that were stored against a wall. On January 14, Lumumba spoke to him.

> *Phillips*: Could you tell us, Officer, what the conversation was between you and Lumumba Shakur?
>
> *White*: Yes. He said that there was some dynamite hidden behind the refrigerator at the Elsmere Tenants Council, and that I shouldn't do my thing. . . .
>
> *Phillips*: Can you tell us what doing your thing was?
>
> *White*: Shooting behind the wall, because it is the opposite wall behind the dynamite. . . .
>
> *Phillips*: So is it fair to say that the dynamite was on one side of the wall and the table tops on the other?
>
> *White*: Yes, it is.

Later that day, when no one else was at Elsmere, Officer White looked behind the refrigerator and found an attaché case. He removed it; this attaché case really meant business, for it contained twenty-four sticks of dynamite. He put it back behind the refrigerator. He got in touch with his superiors and the plot was hatched. Very late the following night, White went back to Elsmere, took the attaché case away, brought it by taxi to a rendezvous point in the Bronx, and met two detectives, who drove him to the bomb laboratory of the Police Academy on East 20th Street in Manhattan. White stayed outside in the car for a couple of hours, sleeping, while some dynamite experts unwrapped the stuff and substituted phony sticks made of clay, oatmeal, a few BB pellets, and some powder that would fluoresce under an ultraviolet lamp.

The two detectives brought the reloaded attaché case out to the car and drove it and White back to the Elsmere office. White went inside—the detectives for some reason did not—and stashed the attaché case behind the refrigerator. He came out and the detectives drove him home.

During the next two days, White told us, he saw Lumumba Shakur take the attaché case out, assemble the dynamite sticks into bundles of about five each, and pass some of them to Mshina and defendant Kwando Kinshasa (William King). On Friday the 17th White checked again behind the refrigerator and found the attaché case back in place, empty.

After the explosion at the 44th Precinct station and the Queens school building, police scooped up debris for analysis; in the courtroom we examined the stuff—along with the fake sticks from the paper bag at the 25th Precinct station under ultraviolet light, and saw that some of it glowed orange and yellow and green.

Black Arts Festival. On the busy night of January 17 there was also a Black Arts Festival at Rockland Palace, a ballroom in Harlem. The Panthers had a booth at the festival, for disseminating literature, and a rival group, led by Ron Karenga, called "US," was also involved. Another secret agent, Carlos Ashwood, helped out at the

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Panther booth. He told us of some of the defendants' comings and goings there, all supposedly connected with the explosions and the shoot-out. Mshina came in and said that something had "gone down"—happened. Sekou came in limping, presumably suffering from the effects of the shoot-out. Defendant Alex McKeiver told Ashwood that something had gone wrong. Someone else came in with a long object covered by a jacket; he and two or three others went laughing into a washroom. Ashwood didn't tell us what became of the long object.

Dist. Atty. Frank Hogan chose the date of April 2, 1969, for the arrests because he and a grand jury thought that the Panthers had marked Easter week for a series of vicious guerrilla actions.

Talk. Another police spy, Gene Roberts, also now a detective—all the spies were black, of course—told us at some length that he was with various Panthers when they were saying they would like to terrorize the customers in Macy's, Alexander's, Bloomingdale's and Korvette's department stores by setting off explosions during the shopping week just before Easter. He also heard them talk about bombing subway stations and railroad yards and police precinct stations. They talked about getting dynamite and devising Molotov cocktails and wiring alarm clocks for time bombs.

Tape Recordings. Gene Roberts—he had been one of Kinshasa's classmates in a Bronx junior high school, and had later posed as Malcolm X's bodyguard—wore a small microphone taped to his chest, with a wire leading to a transmitter at his waist. As his Panther brothers talked, his police colleagues, two black detectives, listened and made tape recordings in their automobile nearby. This was a rather spectacular adventure; I don't know of any other spies who have themselves been wired for sound, though there probably are some at this moment, not far away. We were given headphones and listened to tapes made on two March evenings. We heard comments about guns, bombs, Mao Tse-tung. Revolution—that was supposedly the Black Panther Party's aim; destroy the Establishment; off the pigs, ice the pigs; bring down the Man's system.

Recons. Roberts said he went with defendant Baba Odinga (Walter Johnson) on recons to Bloomingdale's and the other stores. They walked through departments where bombs would be effective, and commented on the possibilities. They visited Abercrombie & Fitch, sporting-goods store, and were impressed by the firearms department; Roberts himself made note of explosive supplies in the basement of Korvette's. He visited a downtown subway station where defendant King worked; another subway employee showed him and King around the place, and they noted great banks of switches. King and Roberts exchanged speculations about the massive disruption a bomb could inflict on the city by putting those switches out of order. Phillips showed us some enormous photographs—taken by his men—of the very switches.

Roberts also scouted the yards of the New Haven railroad with defendant Shaba Om (Lee Roper). At a meeting, King talked about putting explosives on switches to stop trains between New York and New Haven. Phillips showed us photographs—taken by his men—of scenes in railroad yards.

Movie. Secret agent Ralph White told us that *The Battle of Algiers* had to be seen by all Panthers—orders from Lumumba Shakur. The D.A. showed us the film in the courtroom. We watched the besieged Arab rebels of the Casbah plant bombs in milk bars and other public places, killing innocent people, including women and children, in order to terrorize the Algerians and end the rule of the French. The film made the French Establishment out to be cruel and intolerable; the rebels, despite their murderous counterattacks, were the heroes. The D.A. told us that the techniques of the defendants' conspiracy closely followed those of the revolutionaries in Algiers.

Weapons, Bombs. The policemen who arrested most of the Panthers in the early morning hours of April 2, 1969, said they found several rifles and revolvers, with bullets, on the various premises they invaded. In Robert Collier's home they found some short pieces of pipe, with caps screwed on at each end, that the D.A. said were bombs. Two of them contained one "ashcan" firecracker each; the others were empty. In the bathroom of Collier's apartment, the police said, they found a red can of gunpowder on a shelf in plain view.

In Dr. Curtis Powell's apartment the police found three

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bottles of chemicals—aniline, hydrochloric acid and propylamine. In the Shakurs' apartment they said they found a large coil of orange fuse wire and a beaten-up milk carton containing BB shot and powder from shotgun shells that had been taken apart. The D.A. entered all these objects as evidence, and we examined them.

It takes a few moments to accuse someone of something, and it can take him hours, days, to prove that he didn't do it. If you accuse several people of *agreeing* to do something, their attempts to exonerate themselves may be even more complicated and lengthy. The defense attorneys in our case often dragged their cross-examinations out for hours and days, sometimes on the tiniest details—"and which hand did you open the lock with?" His Honor frequently complained about the length of the trial—"Let's get on with it." He seemed to be under the impression that the slowness of the procedures was the fault of the defense. Even when the defense seemed to be bearing down maddeningly on trivial matters and my head throbbed—as it had during *The Battle of Algiers* and the playing of the tape recordings and at other times—I silently said to the judge, "Let the defense have all the hours and days and weeks it needs." The valiant unpaid lawyers were Gerald Lefcourt, Carol Lefcourt, William Crain, Sanford Katz, Robert Bloom and Charles McKinney.

Patrolman McKenzie showed us the important holes in his summons pouch. The bullet, he said, had gone through laterally—the pouch would be an inch or so thick when it was expanded, accordion-style, to hold papers. Defense attorneys asked many niggling questions to clarify McKenzie's statement that his pouch had contained his memo book and a book of blank summonses. McKenzie verified this emphatically. Then Robert Bloom quoted from McKenzie's testimony before the grand jury about the bullet:

Q.: Did that also pierce the book or [of] summonses?
A.: Right through.
Q.: Right through the papers in the pouch?
A.: That is right.

Since the sides of the pouch were collapsible, it was interesting to examine the memo book, with a leather covering that had been inserted also, and find that it had not been torn or burned or grazed. Soon after this, McKenzie said he had been mistaken when he told us that the blank summonses had been in the pouch; they were, he recalled, probably on the front seat of his car, and only the memo book had been inside. I wish the members of the grand jury had been present to hear that. The D.A. was asking us to believe, and he no doubt still believes, that the bullet went through the pouch without touching what was inside it.

The Harlem River Drive melodrama was, according to the D.A., part of the plan to kill policemen. The explosion at the 44th Precinct station across the river was timed to occur when Kuwasi and Sekou were to be up on the rock outcrop, sniping at the cops who would presumably run out in panic. It all seemed quite clear, especially since a couple of the Panthers on earlier days had talked about doing just that sort of thing, if we believe police testimony; they had even vaguely mentioned a building on the Major Deegan Expressway that sounded like the 44th. What the D.A. did not stress was that the two alleged snipers had supplied themselves with only one rifle and three (or four or five) bullets, had no telescopic sight; and were supposed to do their killing at night.

After Mr. Phillips' surveyor had explained his map to us, defense attorney Sanford Katz asked him about how he had prepared it and about the circle he had drawn to indicate a vantage point for the snipers.

Q.: That was the only rock in the area?
A.: No, no, there are other rocks.
Q.: But that was the only point in this entire area . . . that had a line of sight to the 44th Precinct?
A.: No.
Q.: There were others?
A.: There were others, yes.
Q.: But in your judgment that was the best?
A.: That is correct.
Q.: And so Mr. Phillips said, "Put it on"; is that correct?
A.: That is correct.

To add corroboration to McKenzie's story of the shoot-out, the D.A. brought before us Detective Delmar "Scottie" Watson, a genial, tough- and efficient-looking redheaded white man of middle age with, apparently, a reputation for easing confessions out of balky witnesses. He had been summoned late on the night of January 17 to the 34th Precinct station, where Joan Bird had not been "cooperative" in explaining what she had been doing in the red Dodge Dart. The defense suggested that Patrolman McKenzie and his partner had dragged her out of the car and beaten her. One detective told us that when he first saw her at the station he may have asked McKenzie and partner whether they had "worked her over," and I remember being appalled that he should think of putting that question in that way. The patrolmen of course said they had not.

Detective Watson had asked Miss Bird how she was doing; he calmed her down, he told us, and brought her coffee and a sandwich. She opened up and talked. His version of her confession was, among other things, that the Panthers were out to create "mad chaos" in the city and that she had been driving the car for the two fellows because she was being "tested." When she told them they should stop for gasoline, they said no, because they had to be "at a certain place by a certain time." "Scottie" did not make any notes of what "Joan" told him (they were on a first-name basis, he said), nor did he get her to sign anything, nor did he use his authority to bring a tape recorder in. But even if we accepted everything he said as gospel, Miss Bird's "confession" seemed, like most of the testimony, uselessly murky.

Ralph White, the dynamite trickster, told us that Lumumba Shakur and Mshina and Kinshasa all had some of the phony sticks by the afternoon of January 17. But no policeman followed them or tried to keep tabs on them, except that White phoned Lumumba that evening on the pretext of wanting to borrow money and learned that Lumumba was going to Rockland Palace for the Black Arts Festival. None of the three Panthers was arrested for attempted bombing immediately after the explosions, as far as the jury knew.

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Just as it had seemed to me unduly intrepid of the policeman at the 25th Precinct station to carry a paper bag containing what he thought was live dynamite from the rear yard into the station, so I thought that White's carrying twenty-four sticks of the real stuff from Queens to downtown Manhattan, in a taxi and an ordinary police car, was reckless to almost a revolutionary degree.

White's story about replacing the attaché case was so complex that as I listened I thought I was losing track because of my weary head; later, I realized that White had been making undue demands on our sense of continuity. He told us about four (or five or six) pieces of broom straw that he had positioned on the floor to indicate exactly how he should place the attaché case when he returned it. During a later session with a defense attorney he said that he leaned *one* straw against the attaché case *after* putting it back, so that he would know whether anyone moved it. He did not attempt clearly to state whether he was changing his recollection of what he did with straws.

White apparently enjoyed giving us small details of that sort to authenticate his stories, even if they didn't always fit. On January 16, he said, Lumumba gave Mshina a dynamite cap, which Mshina carefully put into the cellophane wrapper from a box of Marlboro cigarettes and then inserted into the empty box. White demonstrated this. Later, defense attorney Gerald Lefcourt read a passage about the same incident as White had told it to the April grand jury: he remembered seeing Mshina wrap the dynamite "in a piece of plastic Baggie, you know, the Baggies; and it was placed inside the empty Marlboro cigarette box and put in his pocket."

Since the courtroom's technique is in many ways the opposite of the theatre's—the judge trying to suppress any conclusions or emotional reactions derived from testimony and evidence, so that jurors will be free to generate their own responses—drama lurks dry and potential in many a small episode. One of these occurred when Lefcourt was cross-examining White on the layout of the Elsmere offices. (The little building had been demolished in February 1969, and the D.A. was not able to produce any photographs or official floor plans to help us visualize the scene.) Lefcourt brought forth from somewhere a rough sketch and showed it to White. "I . . . ask you if that is a fair representation, roughly, of the layout of the Elsmere Tenants' Council. . . . I would offer it in evidence, and ask the witness to correct it."

White studied the paper and made a few changes. When the sketch was given to the jury, we found that the wall separating refrigerator from table tops was not as described; now, by White's admission, there was a small toilet room between them.

Later, near the end of the trial, when the defense brought White's boss and friend Shirley Jones to the witness stand, she—obviously without any urging from Mr. Lefcourt, since it was plain that she was in the courtroom most reluctantly—said that the table tops were in an entirely different corner of the room.

It occurred to me that any rebel worth his salt would hesitate to stash dynamite behind a refrigerator whose door was no doubt frequently being opened and banged shut by people thirsty for capitalist Cokes and so forth. But that was only an amateur juror's speculation. At any rate, it became more and more difficult to feel confident that White had given us an accurate account.

Nonetheless, the fluorescent clay-oatmeal mix was among the few "concrete" semblances of evidence that we were offered, and the question of how it got to the target places, or how it got into our hands as evidence, isn't answered. A real trial, as the defense attorneys had kept reminding prospective jurors before it all began, is not like a fictional one on television. A real defense lawyer does not have to solve the crime and produce the culprit. Since the defendant is "innocent until proven guilty" (a dubious phrase as practiced), all he has to show is that the prosecution has not proved its case against his defendant. There are therefore many speculations about the explosives. Maybe White only imagined that he saw dynamite in the hands of the Panthers. Maybe a secret agent, or an informer, tried to bring dynamite into the picture. Maybe some misguided, or guided, police agent himself strewed the fluorescent stuff at the scenes of the crimes. Maybe all explosive debris contains material that will glow under an ultraviolet lamp; one police witness said that such debris ordinarily wouldn't be examined that way.

Carlos Ashwood's stories about arrivals and reports at Rockland Palace on the night of January 17 were all vague enough to be fitted into the D.A.'s picture of an evening of planned harassment of pigs, or attempted killings; but they were also vague enough to fit into a picture of some kind of operation designed to distress Ron Karenga's "US" group, or almost any other picture you would care to entertain. Sekou's arrival at a crowded public place like Rockland Palace made me doubt that he had just come from anything as serious as Patrolman McKenzie's shoot-out.

Agent Ashwood, a dark, round-faced, mustached man, born in Panama, was to me the most nettling of the witnesses. He seemed to resent defense questions, not merely because the attorneys frequently embarrassed him by asking him whether he knew why he hadn't been promoted to detective along with Roberts and White, but almost as if he took it for granted that he was supposed to get convictions rather than simply to report his observations accurately. He parried the defense questions when parrying was unnecessary. He had strange pauses before and during his replies. I imagined him as a man given over to some apprehension or misapprehension, or mission or message. He had odd ideas of riposte:

Ashwood: . . . Sekou walked by the table. He was limping. . . .

Q.: Well, as he was walking by, did you notice any cuts or bruises on him?

A. (*on a note of conversational triumph*): He was wearing long pants, sir. He was limping.

Q.: Well, did he have a mask over his face?

A. (*No response.*)

Q.: Did you notice his face?

A. (*higher note of triumph*): Yes, I noticed his face. That's how come I knew it was Sekou.

Some of the jurors were amused by this answer; I was appalled by the policeman's atrocious misreading of the question.

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Mr. Phillips' picture of the Easter plot took us from tales of hard evidence to considerations about the nature of conspiracy. The fabric of conspiracy is talk, writing; some kind of communication. We had in evidence no writings, such as, for example, letters commenting on the advisability of kidnapping Henry Kissinger, but we did have reports of talk: the undercover agents' words about Panthers' words. Those were flimsy threads with which to weave. But even if we considered all the reports accurate, and even if we believed that all the Panther talk was serious comment rather than bravado or humor or put-on, we waited in vain for the operative plotting. Did anyone ever say, "Afeni will go to Macy's at 10 A.M. on April 3, with two sisters, and they will carry purses containing time bombs, and will leave them in the ladies' handbag department"? Or "Baba Odinga and Shaba Om will explode Molotov cocktails at switch X on the New Haven railroad at 2 A.M., April 4?" No secret agent even heard the defendants *agree* to take such steps.

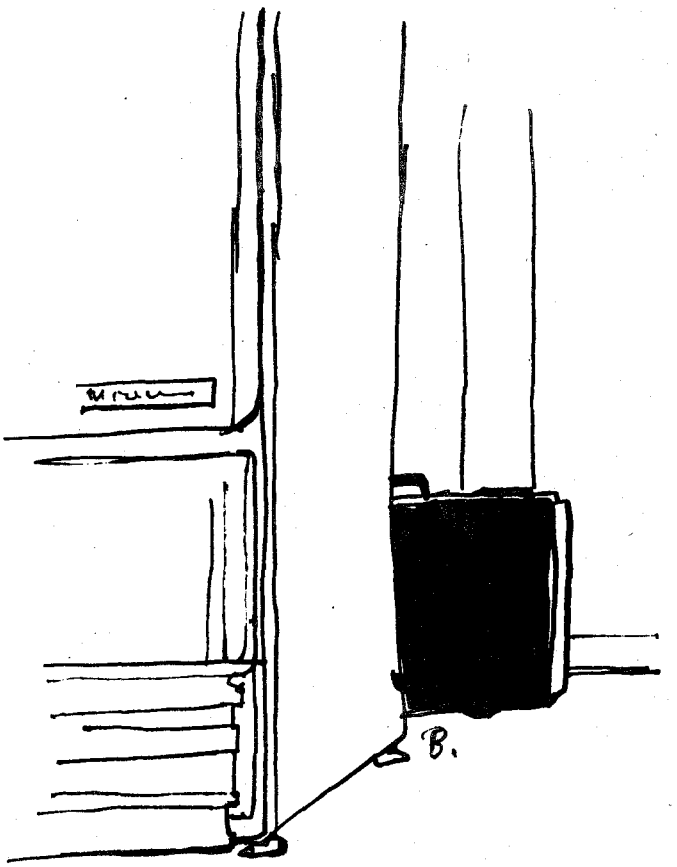
On the tape recordings we heard through earphones, the Panthers talking about handling rifles and about the desirability of taking the offensive in a revolution—they were discussing sayings of Chairman Mao. We heard them actually huffing through "simulated guerrilla warfare" one night in Central Park. Someone said at a meeting that they could try out Molotov cocktails in the Bronx Botanical Gardens—try them on the flowers. "Oh my, flowers; oh my, flowers!" someone else exclaimed. And when they were talking about what was going to "go down" at Easter time, we heard someone suggest New Year's and begin to sing *Auld Lang Syne*. The grand jury evidently did not hear all these things.

As to the recons, Gene Roberts did say that a couple of other Panthers, during meetings, also told about their own observations of railroads, police stations, etc.; but as Roberts' answers to the cross-examiners continued, it became obvious that play-acting formed a large portion of the Panthers' encounters with one another, in a form that would have needed many more weeks and serious plans and explosives if it *was* to be transmuted into action. Roberts said he and the brothers "reported" on their recons, but he was unable to tell us about any conversations or group discussions that got past what defendant Richard Moore (Iharuba) called "shucking and jiving." Roberts and his fellow observers never made on-the-spot sketches or notes of the places that they were supposed to blast.

That play-acting probably took many of its cues from *The Battle of Algiers*. The film may or may not have really been mandatory for the Panthers. Although Ralph White hied himself downtown to the Elgin Theatre for its last performance there the same evening that Lumumba Shakur recommended it, only one other secret agent considered that he had been commanded to see it. (A film called *Huey Newton*, which Gene Roberts told us was also mandatory, was not shown to us.) Nevertheless, the Panthers had evidently been strongly influenced by the French film. The talk we heard about, and heard ourselves on Gene Roberts' tape recordings, was full of wishful plotting, by people who seemed to feel themselves trapped in their own Casbah.

Near the end of the trial, the defense brought only ten witnesses, a small number compared with the D.A.'s cast of seventy. One of them was Colin Connery, a young white man with bright prominent eyes and a small mustache. He had worked at the Tompkins Square Community Center, on New York's lower East Side, with Robert Collier. When Collier wanted to install a shower in his nearby apartment Connery said, someone brought over a large basket of discarded pieces of plumbing pipe from the Tompkins Square Center. Connery said that he helped Collier and another man put in Collier's shower. The three 6-inch lengths of pipe, according to Connery, were remnants of this project; Collier's daughter had probably played with them.

It is true that caps were screwed onto them at each end when we saw them, and that at least one cap on each pipe had a small hole drilled through the center, so that the assembled objects looked exactly like a pipe bomb illustrated in one of the books on explosives that were in



evidence. But, I thought, even an imitation pipe bomb is not a pipe bomb. I don't think Connery's testimony made much difference in our verdict—except perhaps to help speed it up.

The D.A.'s handling of Connery probably didn't affect the verdict either, but it gave us a deeper insight into the prosecutor's soul. When Mr. Phillips cross-examined him, his tone was often snarling, his gestures contemptuous, his questions colored by emotional insinuation. For a short time Connery shared an apartment with a Presbyterian minister who had given Connery living space when he was without an apartment. I don't know whether the D.A. expected to get much mileage by hinting at sexual deviation. To me, and I think to all the jurors, it wouldn't have mattered.

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But the D.A. administered a *coup de grâce manqué* in the afternoon session, the lunch recess obviously having given him time to do some checking up. In answer to a routine question, Connery had said that he had no arrest record. After lunch the D.A. asked him whether he hadn't been arrested in Chester, Pa. in 1965. The witness' answer sounded suspicious: he wasn't sure, he might have been. But Connery then went on to explain, under Robert Bloom's redirect examination.

There had been a demonstration against *de facto* school segregation in Chester, when Connery was enrolled at Swarthmore. He was undecided at the time whether he wanted to participate in such activity, and was hanging around two blocks away from the demonstration when a police van full of people who had been arrested came down the street. Connery became angry, and stayed where he was. He heard one of the policemen say, "That's another one of those mother fuckers" and he was arrested and taken with the others. Altogether, he said, about 300 demonstrators were arrested. Since the jails were full, he and others were kept in a large garage.

> We hadn't been fingerprinted or anything, just sort of like cattle, and for about a week we slept on army surplus cots that were caving in and ate really foul bologna sandwiches and very bad soup, and I guess I was released in about a week and a half.
>
> And then we met with our lawyers, and it was at that time—our attorney at the time was Ed Lawthorn, I think was his name. The case was later transferred to Anthony Amsterdam. But Lawthorn said two things: First, he said that there were a number of very minor charges in connection with this, that were in the nature of, say parking violations, you know, and just as a matter of getting them out of the way, you know, they would deal with it, you know, with the understanding that this would not reflect on our records.
>
> So, it is possible that, you know, acting as my attorney, you know, he pleaded guilty or something. I do not know the details of those charges.
>
> The other charges were made. No formal indictment was made, and the charges have since been dropped entirely, all of them.

That story was one of the defense's better moments, and one of Mr. Phillips' worst.

Why were the Panthers arrested?

> *Mr. Lefcourt*: Now, at the time the object of this mission was to get Mr. Moore, isn't that correct?
>
> *Police Sergeant Abraham*: Well, to arrest him, right.
>
> *Q.*: And that object was completed as soon as you opened the door; you had him, didn't you? . . .
>
> *A.*: It was partially completed when we apprehended him, and we took the immediate material that was around him that would assist the District Attorney in presenting his case.
>
> *Q.*: The immediate material around him. Does that mean anywhere in that apartment, or does that mean where he was standing?
>
> *A.*: In the room, where he was standing.
>
> *Q.*: Did you take the rug?
>
> *A.*: No, we didn't need that.

The system that does not respond to all needs may respond to demands, if it has to. When a system is not working properly, some of the people whom it is failing may complain, and when their complaining fails they may talk about fighting, and when that talk fails they may try to fight. This analysis is an amateur citizen's way of suggesting why New York Dist. Atty. Frank Hogan and his men tried to do something about the Black Panther noise. They did not set out truly to investigate it; they set out to quash it. If they had undertaken a genuine investigation, the facts that were obvious to us jurors would have been obvious to the investigators, and the many arrests on April 2 would not have taken place.

It is comic to try to imagine those spies—Roberts, White, Ashwood—reporting the activities of the Panthers accurately, fairly. Supposedly their job was simply to tell what they saw and heard, but they had to select the stories that would "assist" the district attorney. The men who arrested Richard Moore didn't take the rug from his apartment; well, of course not. The men who broke into Curtis Powell's apartment (he was absent at the time of the arrests) did take two bottles of an unnamed substance along with the three labeled bottles of chemicals. But the two unmarked bottles didn't get past the Police Department chemical expert; he eliminated those mysterious fluids because he sensed that they didn't offer any positive indication of conspiracy. He was a genial, homely man, incidentally, who had a charming habit of addressing his testimony down to the court stenographer. He was not engaged in cancer research, as Powell (Ph.D.) was. The discarded fluids? Yes—the genial chemical expert agreed with the defense attorney—they smelled as if they might well have been rat urine. The grand jury, working in the D.A.'s dark, didn't take them into consideration: they considered only the three liquid chemicals.

The guns. I can, without feeling too naive, ask whether the defendants really did possess guns as charged. Whether it was adequately, legally proven that all the defendants possessed all the guns attributed to them, whatever one may think about the probability of such possession in a revolutionary party. But yes, one can understand a grand jury's indictment on that point. And yet among the twelve counts against the defendants that we were finally handed by Judge Murtagh, possession of dangerous weapons was not listed.

So the defendants were rounded up, and they made a lot of noise at their hearings—both out of habit and out of outrage, I am sure. The police, in their public statements, made them sound a dangerous bunch. They came to trial at last. The defense attorneys enabled the jury to clear away some of the muck that the system had dumped on them.

No short summary of the trial's highlights could do justice to the D.A.'s elaborate presentation of documents found in the defendants' apartments—Panther meeting schedules; Xeroxed "books" on urban guerrilla warfare; a small paperback edition of *Thoughts of Chairman Mao*, which I spent some time in the jury box scanning for instructions on blowing up subways; a copy of the Black Panther newspaper which contained an article on bombs and other explosives—this article not marked in any way to suggest that its owner had read it. Equally elaborate were the presumably interwoven remarks made by the Panthers, as reported by the undercover agents. The D.A. also introduced police experts, who told us such things as what dynamite was made of (I was surprised to learn

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that it is somewhat soft, malleable), and how murderous a blast from five sticks of it could be. He devised what he called "Chemistry Day," to instruct us in the scientific principles used in testing for revolutionary conspiracy.

I wondered at the start why the D.A. permitted me, and others of apparently "liberal" persuasion, to serve on his jury; gradually I began to think it was because he credited us with enough imagination to create this conspiracy, as he had, out of the gossamer strands of "evidence" his men had accumulated. I didn't know what my fellow jurors were thinking; admonished as we were by His Honor several times a day not to discuss the case, we had to rely for the most part on indirect clues as to our state of mind. But I hoped that the cynicism that I was massively generating was also afflicting the others.

Mr. Phillips turned out to be one of the star puzzles in the drama. As I waited for the clinching evidence—the real agreement overheard or recorded, the witness who actually saw someone place dynamite—and as it began to dawn on me that the clincher wasn't going to come, I wondered more and more about him. Apparently he wasn't, as I had imagined at one point, just "doing a good job," pursuing a case that he sensed was meritless. His summation fairly convinced me that he believed in the conspiracy.

That summation was a shock. Mr. Phillips was capable of genuine humor, but the paternal-fraternal tone he was using now, the bad jokes and assumptions he expected us to share, the old, old-fashioned attitudes and techniques in his four-day-long speech, threw us all. We did not laugh at his lodge-meeting playfulness. He asked us, jovially, whether we remembered a certain date or incident, and waited for our response, and we sat like stones. When he spoke of the defendants as low types, I think we were all disturbed—not because Afeni Shakur was eight months' pregnant and obviously exhausted, or because we had learned that Clark Squire had been a $17,000-a-year computer operator and Curtis Powell a cancer research specialist. Nor did the absence of defendants Michael Tabor (Cetewayo) and Richard Moore, who jumped bail on February 8, make us share the D.A.'s serious misgivings. One of the jurors remarked, during a lunch hour, "He just doesn't know his audience!" Is the average jury or grand jury the kind that *would* respond to Mr. Phillips' humor?

Offended as I was by his presentation, I would not be interested in criticizing it except for the reason that to me he stands for the world of dying assumptions that has damaged my fellow citizens and me and my nation. With his cohorts, and I think to a great extent with Judge Murtagh, he stands with the fat cats, the powerful whites who feel that this world belongs to them and certainly not to the poor, or to people who cohabit without getting married, who have children without benefit of Establishment sanction, who don't "get along" in the Army (as was true of one defense witness whom the D.A. badgered). And I have the depressing notion that many grand jury members share that fantasy. I don't think all my fellow jurors—we have become friends—feel as strongly as I do about this conflict: to me it is the old world desperately trying to stifle the birth of the new one. Not necessarily a new world of violent revolutionaries but a world of people freed from the fat cats' misbegotten laws and customs and loyalties and moralities.

Our two-and-a-half-hour deliberation was a friendly affair: over sandwiches and coffee, we developed a quiet realization, point by point, that we had all been registering the same impressions about the "evidence." Two teachers, a political science student, a Housing Authority maintenance man, a woman from the New York State Insurance Department, a retired longshoreman, a composer, two book editors, a television-film editor, a welfare administrator, and a Post Office employee; five blacks, one Puerto Rican, six whites; a fair jury in an unfair trial.

I don't think, as some do, that our verdict was a direct rejection of conspiracy laws; if we had heard evidence of real agreement to bomb and murder, we might have spent more than two and a half hours deliberating, and we might have come up with a different result. I also don't think it represented a triumph of the American system of justice—that trial should never have taken place. Our motley jury may, however, represent a generation that at least is willing to watch the new day get born—that knows there has to be a dawn, washing away the stink of the American night. □

DEGREES IN PARANOIA

THE COLD-WAR COLLEGE

BERKELEY RICE
Mr. Rice, a free-lance writer, has written many books and magazine articles. His latest book is The C-5A Scandal, *published in May by Houghton Mifflin.*

What do West Point, Annapolis, Colorado Springs and Boston, Virginia, have in common? The first three are the sites of the U.S. Army, Navy and Air Force Academies. But Boston, (pop. 450) Virginia? That's the home of the Freedom Studies Center, which its organizers like to call the "Cold-War West Point" (see editorial: "Perfect Timing," *The Nation*, July 5). It serves as the headquarters for a vast and varied program of propaganda aimed at building public support for hard-line defense policies, increasing defense spending, and alerting the country to the menace of world communism.

It was supposed to be the United Freedom Academy, but the bill which would have authorized its establishment by the federal government never got through Congress. Backed by a group of conservative Congressmen in 1965, it reached the House Un-American Activities Committee, which approved it unanimously. The Johnson administra-

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tion, however, along with the Departments of State, Defense and Justice, opposed the idea on the ground that it would duplicate and conflict with the work of existing government schools and agencies.

Though deprived of federal funds, the project's backers raised enough money from private corporations and foundations to get the Center started in 1966. This year they have launched a fund-raising campaign aimed at turning the Center into a full-scale "Cold-War College." A special appeal on behalf of the Center sent out by former Ambassador to Italy Clare Boothe Luce (whose Longlea Farm is also located in Boston, Va.) has brought in contributions from thousands of patriotic Americans.

While the Center still has no official federal support, it does have powerful friends in Washington. Its advisory board lists Vice President Spiro Agnew, Cabinet Secretaries John Volpe, Rogers Morton and George Romney, plus nine Senators (Mundt, Boggs, Harry Byrd, Dominick, Hansen, Hatfield, Long, Miller, Thurmond), twenty-eight Representatives and six state governors. Relations with the Pentagon are equally cordial. The Defense Department was instrumental in the Center's creation, and still provides high-ranking speakers and other forms of cooperation. At the Center's dedication ceremonies in 1966, the Joint Chiefs of Staff sent the Army's Director of Special Studies, an admiral from the Navy's Military Policy Division, a military color guard and a twenty-piece Navy band. J. Edgar Hoover sent his greetings, and President Lyndon Johnson wired: "You have my every wish for success."

One wonders how much President Johnson knew about this new venture to which he gave his blessing. The draft plan for Freedom Academy was drawn up by Edward Lansdale, a retired Air Force general who would have become its director had Johnson not picked him to run the U.S. counterinsurgency program in Vietnam. In the draft proposal Lansdale described the Academy as a center of "psycho-political warfare," and saw its potential students as "men of good will who—if they just knew how—are willing to strike a blow for liberty. . . . Such a blow, struck the right way and the right moment, could well change the course of history in favor of freedom." Lansdale envisaged sending teams of Academy graduates to foreign countries at the request of local political leaders, or "acceptable third parties." These freedom teams would "assist with practical advice on how to resolve problems of concern to freedom." Lansdale was not specific about what such problems might be, but those familiar with his thinking feel he meant the "liberation" of Soviet bloc countries, and the suppression of popular uprisings in non-Communist nations.

If all this sounds a bit like a private CIA, it should. Major General Lansdale is a former CIA official. The Center's directors of education and special projects are both former CIA men. One of the first guest speakers at the Center was ex-CIA chief Allen Dulles. In the words of its president, John Fisher, the Center's purpose is "to fill the gap between what the government can do, and what must be done," which describes equally well the activities of the CIA.

Though his background in foreign intelligence is minimal, Fisher has had considerable experience in domestic intelligence work. A former FBI agent, he joined Sears Roebuck in 1953 to run its "corporate security" program, which in that McCarthy era meant rooting out suspected Communist employees, rather than guarding against industrial espionage. Fisher then moved on to the staff of the American Security Council (ASC), an industrial blacklist organization that keeps tabs on alleged subversives for the benefit of member companies.

Since 1960 the ASC has shifted its emphasis from the threat of internal subversion to external military dangers. Using its own influential newsletter and radio program, it has become a powerful propaganda center for hard-line defense strategists, with close ties to the Pentagon and Congress. In recent years the House Armed Services Committee has commissioned studies from ASC on Soviet nuclear and maritime power. Both reports unsurprisingly called for sharp increases in U.S. defense spending. ASC also helped to mobilize nongovernmental support for the ABM, publishing its own book in defense of the system. None of ASC's studies mention that its corporate members include such major defense contractors as General Electric, North American Aviation, U.S. Steel, Republic Steel, Motorola and Honeywell. In 1969, the ASC and its publishing subsidiary ASC Press, spent more than $750,000. During the 1970 Congressional elections, ASC organized "Operation Alert," a "voter education" program to call attention to what it considers a growing strategic missile "gap," and to show how Senators and Representatives have voted on national security issues.

With the expansion of its operations, ASC, which does not have a tax-exempt status, took over another anti-Communist organization called the Institute for American Strategy, which does. IAS produces textbooks on communism and patriotism, and has organized seminars on cold-war defense strategy for businessmen, educators, reserve officers and the National Governors Conference. IAS works closely with the American Legion, the National Education Association and state education officials in spreading its materials through local communities and schools. Its budget for 1969 was more than $200,000.

Using the tax-exempt IAS, the American Security Council in 1966 created the Freedom Studies Center as a tax-exempt educational institution. The ties between ASC, IAS and the Center are now so close that an outsider might easily think of them as a single organization. They share activities, office space, a communications center, finances, staff and a single president—John Fisher. This makes it relatively simple for Fisher to solicit contributions or assistance from his other two organizations.

With its reputation for aggressive anti-communism and hard-line defense strategy the Center has naturally attracted contributions from wealthy patriots and right-wing foundations. The Center's "founders," who have donated more than $10,000, include such right-wing angels as Henry Salvatori, the West Coast oilman, publisher Henry Regnery and Gen. Robert Wood, retired chairman of Sears Roebuck. Industry contributors include U.S. Steel, Sears Roebuck, Atlantic Richfield, Phillips Petroleum and Allis-Chalmers. The Center has also received financial support from the nation's conservative press: the Copley Newspapers, the Los Angeles *Herald-Examiner* and the Reader's Digest Foundation.

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Operating on an annual budget of $250,000 to $300,000, the Center currently conducts monthly three-day seminars at its twenty-three-room mansion, located on 670 acres of Blue Ridge foothills near Culpeper, Va., about 90 miles from Washington, D.C. The estate cost about $500,000 and looks it. During the seminars the Center has the air of an antebellum plantation, with walks in the formal garden, afternoon and evening cocktails, and meals in the oak-paneled dining room with Negro servants. The seminar sessions take place in a briefing room with visual equipment worthy of any corporate board room. A dozen "tough-minded" speakers present what the Center calls "an inside look at the cold war." The speakers are generally a mixed bag of retired military officers, "experts" from the American Security Council, and hard-line professors from vaguely academic institutes of defense strategy.

The audience consists of twenty-five to thirty seminar participants (also called "guests" or "students") who pay about $125 for three days of room, board and tuition. Worthy newsmen, educators and government officials may attend on a "fellowship" basis. Participants seem to be selected either because they represent sources of corporate or foundation support, or because they hold positions from which they can spread the Center's gospel. Recent students included executives from General Electric and Litton Industries, newsmen from the *Los Angeles Times* and *The Detroit News*, officials from the Atomic Energy Commission, the Defense Supply Agency, the Industrial College of the Armed Forces, and the directors of civil defense for Massachusetts and Maryland.

The Center has made a special effort to recruit college and public school officials as participants. Success at the college level has been limited to such schools as Indiana Central, Converse, Le Moyne, Christopher Newport, C. W. Post and Ladycliff. At the public school level, however, it has had better luck. Its educational advisory board includes top public school officials of California, Texas, Massachusetts, Illinois, Florida, Kansas and Nebraska.

At a seminar attended by this reporter, the participants included the administrative assistants to Reps. Robert Corbett (R., Pa.), Craig Hosmer (R., Calif.) and Jackson Betts (R., Ohio), an official of the National Education Association, an executive of the Franklin National Bank of New York, a vice president of W. R. Grace, two local Virginia reporters, a lawyer and several retired businessmen. There were three retired Canadian officers from an organization called "Polaris," which they described as a Canadian "industrial-security sort of thing," similar to the American Security Council, but more secretive. "We don't want this thing to get out," one of them told me. "The public wouldn't understand."

The seminar got under way with an introduction by President John Fisher. He told the guests that the Center plays an important part in filling the "cold-war education gap" by informing the public about the threat of world communism. For those guests concerned about U.S. domestic problems, Fisher warned that "meeting the Communist challenge is the main priority. Without this, all other problems in the United States are meaningless."

After cocktails and dinner the guests gathered in the briefing room for their session, a review of "cold-war hot spots" by Frank J. Johnson, an ex-Naval intelligence officer who now serves as foreign editor of the American Security Council's monthly newsletter, *Washington Report*. (This newsletter receives excellent editorial coverage in the country's conservative press, and is run in full by many papers.) Mr. Johnson still serves as an intelligence instructor in the Naval Reserve, and lectures regularly at the Foreign Service Institute. In his talk at the Center he gave a brief rundown on various countries in which he saw "an effort by communism to subvert mankind." An accompanying map showed the United States surrounded by a world of red- or pink-colored countries, which Johnson described as "a giant pincers that threatens to engulf us all." He pointed out a few bright spots like Brazil and Guatemala where military coups had saved the countries from communism.

As for remedies, Mr. Johnson saw little value in the Nixon Administration's efforts toward arms control negotiations and other diplomatic maneuvers. In his book, *No Substitute for Victory*, he has set forth several more imaginative solutions to the cold war. He recommends a naval blockade of Cuba, followed by a U.S.-backed invasion; unleashing Chiang Kai-shek's troops to attack mainland China; and taking "some piece of real estate away from the Communists," like Albania, to show them we really mean business. Mr. Johnson does not seem to fear the possibility that such strategies might easily end the cold war by starting a hot one.

The other speaker of the evening was Col. Raymond Sleeper, a former MacArthur staff officer who recently retired as head of the Air Force Foreign Technology Division, and became director of research for the Center and the American Security Council. One of Colonel Sleeper's current projects is the development of a computerized "cold-war situation room" at the Center which he hopes will serve as a model for a similar unit at the White House. In his address to the seminar, he compared Soviet and U.S. nuclear power and concluded that the United States is behind or rapidly falling behind in every category of nuclear arms, a view not shared by all U.S. defense intelligence experts. Colonel Sleeper is one of many retired officers associated with the American Security Council, including Gen. Robert Richardson, former deputy chief of staff for planning for the Air Force Systems Command, who also appears regularly at the seminars.

General Richardson spoke this time on the U.S. strategic policy gap, or as he put it, "who can deter whom, and if not, who can come out of it best." He cited figures showing an alarming decline of U.S. strategic power, and urged the immediate deployment of an ABM system. Admitting the ABM has "a few technical deficiencies," he said, "It may not be the best thing, but you've got to start somewhere." Our greatest danger, he believes, is the "erosion of our will to get out there and use everything we have."

The next day, the seminar continued with a talk on "Communist semantic warfare" by Erik J. Vesely, a civilian intelligence specialist who has worked for the State Department, AID, the Air Force and the CIA, and who is now educational director of the Freedom Studies

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Center. Either because of the early hour, or his own semantic problems, Dr. Vesely's long and intricate analysis of Communist terminology left most of the audience completely confused.

Perhaps as an antidote, the seminar's main speaker was next—Walter Judd, a spell-binding 70-year-old professional anti-Communist. Judd writes frequently for *Reader's Digest*, and delivers the American Security Council's *Washington Report of the Air*, a daily five-minute anti-Communist radio program carried by several hundred stations across the country. He brought the audience a first-hand report from Vietnam, which he had visited recently. To him, the stakes in Vietnam are nothing less than the freedom of the United States. Judd is so convinced of this that he opposes any bombing halt or peace talks. He worries particularly about President Nixon's willingness to negotiate, an aberration he generously attributes to the influence of Nixon's "left-wing" advisers. "I wish he would stop saying he wants negotiation instead of confrontation. Confrontation is the only way to get to negotiation."

The only obstacle to a U.S. victory in Vietnam, according to Judd, is "civilian limitations on the military," a common theme at every Center seminar. Accusing the Administration of following the same "no-win" policies that led to a stalemate in Korea, Judd told the audience, "If our government isn't going to give this leadership, we've got to." The kind of leadership he has in mind for Vietnam would include invading the North, destroying its rail lines to China, bombing its dikes and flooding its rice fields. Whether or not such a policy would force North Vietnam into surrender (it would certainly drown many peasant farmers) it would probably bring Red China into the war, a prospect Judd would welcome.

Judd claims our will to win the war has been hindered because "the American people are not getting the facts" except from organizations like the Freedom Studies Center and the American Security Council. Despite this alleged absence of information, he also called for stricter censorship on U.S. reporting of the war, particularly on what he termed "minor setbacks," or "accidents" involving the death of innocent civilians. He criticized former President Johnson for trying to create his Great Society during the war: "He should have concentrated on the war, not social programs. Some of this stuff has waited 180 years, and it can wait a few years more."

During the question period that followed each lecture, a retired businessman from South Carolina asked Judd why men like Senators Fulbright, McCarthy and McGovern were "always wrong" on Vietnam. Judd replied that they were either ignorant, guilty of wishful thinking, or had fallen under the influence of Communists. Of the three possibilities, Judd leaned toward the third, particularly for Fulbright. "When a man makes as many decisions as he has over the years that favor the enemy, I just don't know. I'm not making any accusations now, but it's puzzling."

That afternoon the students heard lectures by two professors known in academic circles primarily for their aggressive views on defense strategy: James Atkinson of Georgetown's Center for Strategic and International Studies, and Stefan Possony of Stanford's Hoover Institution on War, Revolution and Peace. Both have served as consultants on defense strategy at the Pentagon, lecture often at the service war colleges, and are editors of the American Security Council's *Washington Report*. Professor Atkinson has designed a curriculum for Freedom Academy, and Professor Possony will be its chancellor for academic affairs.

Possony warned: "If the Soviets feel they have a superiority in armaments, they will knock us out at once." He went on to describe the peace movement in the United States as part of the Communist strategy of psychological warfare designed to "set us up for the ultimate kill." He claimed that the Communists had plotted and caused both World Wars in this way. The reason the American public is unaware of this danger, according to Possony, is that "the professors of history in this country are a pretty bad bunch." He suggested that many of them were in fact "Communist dupes."

The rest of the seminar was devoted to the threat of internal Communist subversion. William Lambie, an ex-FBI man who runs the American Security Council's subversive information service in Chicago, warned that the U.S. Communist Party is behind the peace movement, pointing out that demands for a halt in the bombing, withdrawal of U.S. troops and formation of a coalition government were all part of "the official party line." One of the students commented that even some government figures had been making such suggestions lately, and asked Lambie if he felt there are "Communists in the government in important positions." "Yes, definitely," replied Lambie, "but I've never been able to make up my mind if it's by design or accidental."

During the lectures, discussions, cocktail hours and meals, much of the time was devoted to identifying various people, organizations and movements as Communist or "Communist-inspired." No one offered or asked for evidence, for agreement was unanimous. In the three days of this particular seminar I heard the Communist label applied to: SDS, SNCC, SCLC, the civil rights movement, draft resistance, the peace movement, ROTC opponents, Mark Rudd, Father Groppi, Picasso and modern art, consumer protection, the income tax, the Ford

Vadillo, Siempre (Mexico)

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Foundation, unions, liberal Catholic priests, pornography, drug addiction and sex education.

The U.S. press in general, and particularly its coverage of the Vietnamese War were said to be under the influence of Communists. *The New York Times*, *The Washington Post* and *Look* were described as "left wing." A few publications, such as the *Chicago Tribune* and *Reader's Digest*, received praise for standing fast against the leftist tide. People known as anti-Communists were "solid," "tough,' or "practical" men. Most businessmen "know what the score is," but many college administrators need more "iron in the backbone." During cocktail hours the seminar participants discussed the speakers, whom they found generally impressive. As the man from the National Education Association put it, "these boys are really smart on this cold-war thing." After dinner, everyone stayed up late drinking and swapping jokes about hippies, Communists, Jews and other "oddballs."

The highlight of the seminar came when an army helicopter fluttered noisily out of the dusk and deposited the evening's guest of honor, Army Chief of Staff Gen. William Westmoreland. Accompanied by three aides—a general, colonel and major—Westmoreland joined the afternoon cocktail party. They all wore civilian suits, "to put you people at ease," as the Chief of Staff told us.

After dinner General Westmoreland gave a short talk on the war in Vietnam, the essence of which was that only "political restraints" from Washington had kept him from gaining a "classic military victory." While he did not say much that was new, his presence electrified the seminar, and represented a great coup for the Center. As one of Westmoreland's aides pointed out, the General turns down seven invitations to speak at private affairs for every one he accepts.

The reflected prestige of a visit by someone like General Westmoreland means a great deal to John Fisher, because he has big plans which require such publicity. Fisher plans to turn the Center into Freedom Academy, with 400 full-time graduate students and faculty. This would require $11 million, part of which the Center's organizers hope will come from the federal government, with the help of the Congressmen on their advisory board. Fisher admits he "wouldn't object to government support as long as they left the administration in our hands."

Some might question the wisdom of putting public funds in the hands of Fisher and his colleagues at Freedom Studies Center. Some might question the Pentagon's active support—including General Westmoreland's official visit—of a private organization so openly critical of U.S. military policies. Some might question the propriety of federal and state government officials receiving indoctrination on internal subversion from lecturers who imply that liberal Senators are Communists. Some might question the role of the public school officials who serve on the advisory board of an "educational" institution which claims many college professors are "Communist dupes." Some might question the tax-exempt status of an institution so aggressively devoted to political propaganda. Some might even question the need for a school of cold-war psycho-political warfare.

But not John Fisher. He sees his Freedom Studies Center as a vital link in the world's defense against communism. "Whatever we're doing here," he warns, "it isn't enough, because the other side's still winning." □

GI ADDICTS

THE CATCH IN AMNESTY

SAMUEL A. SIMON

Mr. Simon, now serving as a captain in the Judge Advocate General's Corps, U.S. Army, is a member of the bar of the Federal District Court for the District of Columbia and the United States Court of Appeals for the D. C. Circuit. In 1970 he was employed as an attorney in Ralph Nader's Public Interest Research Group. The following article represents his own views and does not reflect those of the Department of the Army or the Department of Defense.

The Defense Department's initial response to the growing drug problem in the military has been to push an "amnesty" program designed to encourage drug users and addicts to turn themselves in for treatment. The essence of the program is to assure military drug users and addicts that they will not be prosecuted if they voluntarily seek help. The program, announced with much fanfare and great expectations, has never really gotten off the ground.

At first, resistant commanders made every effort to thwart full implementation of drug amnesty. For example, at one base the commander instructed the Criminal Investigation Division (Army detectives) to institute an investigation into drug use so broad in scope that it involved most of the enlisted soldiers under his command. Since a prerequisite to receiving amnesty is that one must not have been under investigation by the military police, this action effectively nullified the program at that base.

As the program has slowly gained command support, however, a more basic problem has appeared: even when fully applied, the program offers only a very limited form of amnesty. In fact, substantial adverse consequences, both during and after service, still await the users and addicts who turn themselves in for treatment. Yet the soldier is indoctrinated from the day he enters the military with the virtues and protection of the drug amnesty program. Everyone from the soldier's company commander to the President of the United States has assured him that if he turns himself in as a drug user no punitive action will be taken. Deputy Asst. Secretary of the Army John Kester stated at the National Heroin Symposium held at the University of California Medical School in July: "I can assure you, a serviceman's addiction will not show

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Huffaker, News & Observer (Raleigh, N.C.)

up in any permanent records." Similarly, President Nixon was reported (*Washington Post*, July 18) to have assured soldiers that punitive action would not be taken against those who volunteer for treatment. Nevertheless, more and more soldiers are finding that in actuality amnesty doesn't mean amnesty.

First, amnesty applies only to the crime of possession and use of drugs. It does not apply to possession of large amounts of drugs, to selling drugs, or to drug-related offenses. If in the course of granting amnesty or during subsequent treatment it is discovered that the soldier committed some other crime, he will be tried for that offense. Thus the heroin addict who returns from Vietnam, finds that he must steal to support his habit in the United States, and then turns himself in will be subject to court-martial for theft. Moreover, the probability of related offenses coming to light is fairly high, since in the military there is no such thing as a privileged communication between doctor and patient.

Second, whenever a soldier enters the drug amnesty program he *automatically* cuts off all veteran and disability benefits for treatment of drug-related injury or disease which he might otherwise be entitled to after leaving the service. In addition, he will be required to add the time spent in treatment to the length of his tour of duty. These results stem from the military system of assigning blame for every injury or disease incurred by a soldier while on active duty. If an injury or disease is considered to have been incurred "not in the line of duty" and "due to [the soldier's] own misconduct," the soldier will be required by law to make up the time spent in treating the injury or disease and will be denied veterans' benefits related to the injury or disease. "Line of duty" is a vague term and unless a soldier intentionally inflicts harm upon himself or is grossly negligent, injuries are normally so classified. However, subparagraph 5-19a(3)(a) of Army Regulation 600-10 states that any injury or disease directly resulting from "intemperate" use of drugs will be considered to have been incurred "not in line of duty—due to own misconduct."

Although it would seem simple enough to adopt a restrictive definition of "intemperate" and hold that in the future all but cases of obvious overdoses of drugs will be considered to have been incurred in the line of duty, this has not been done. This one exception has been Gen. John J. Tolson, Commanding General of Fort Bragg, N.C., who has simply ignored the regulatory requirements. But even this small island of progress is under pressure. In June the Department of the Army issued a message to commanders demanding strict compliance with the line-of-duty regulations.

Third, a soldier who enters the drug amnesty program runs the risk that this fact will be used as evidence against him in subsequent administrative or court-martial proceedings. It is possible, for example, that a soldier will be granted amnesty for drug use or possession, be tried for a theft committed to support the habit, and at the court-martial on the theft offense have the fact of drug use or addiction presented as evidence both on the merits and in the portion of the trial on sentencing.

In addition, drug use or addiction will be a major factor in administrative proceedings used to eliminate addicts or users from the service. If the administrative elimination is based *solely* on drug dependency, the regulations now require that an honorable discharge be given. But frequently a soldier who has submitted to treatment under amnesty will be subject to elimination for other reasons. In these proceedings, drug use will be a significant factor considered by the soldier's superior officers when making their recommendations as to retention and the type of discharge to be given.

Oddly enough, the same situation does not exist under the new urine sample program. The regulation implementing the urine sample requirement in the United States for all soldiers going to Vietnam or leaving the Army specifically states that any information received as the result of the obligatory sample, or in the treatment of addicts thus discovered, cannot be used in any other proceeding against the soldier. At first sight the military would seem to have made an effort to avoid the anomalies of the drug amnesty program. At least with respect to court-martial proceedings, the regulation does nothing more than provide what the law already requires. It is clear that the urine sample is taken as the result of an illegal general search not based on probable cause and could not be competent evidence in any court. In fact, there is some doubt about the legality of the urine sample requirement itself, on the ground that it constitutes an illegal invasion of privacy contrary to the Fourth Amendment.

A number of other adverse consequences threaten the soldier who submits to treatment under drug amnesty, among them loss of security clearances and job transfers. Yet many soldiers would no doubt want to enter the program even with full knowledge of all the dangers. The problem is that the average soldier is rarely fully informed and relies instead on false assurances from the President and members of the military establishment.

The result is that most soldiers do not become aware of the hazards of participating until they have gone beyond the point of no return. Once he asks for amnesty, a soldier finds that he must accept all that goes with it—loss of benefits, extension of his tour of duty, loss of security clearance, etc.—or withdraw from amnesty and be prosecuted on the drug use offense. In short, all that the military has been able to do, with apparent great effort, is develop "amnesty with a catch." □

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BOOKS & THE ARTS

The Factory and the Village

THE BIRTH OF MODERN AMERICA 1820-1850. *By Douglas T. Miller. Pegasus. 224 pp. $6.95.*

RAMON POWERS
Formerly with the University of Missouri (Kansas City), Mr. Powers is at present teaching history at the Haskell Indian Junior College, Lawrence, Kans.

Douglas T. Miller, associate professor of history at Michigan State University, proposes a significant reinterpretation of American history in his latest book. It challenges the view held by the great majority of professional historians and laymen, that modern America is the product of the intense industrialization and growth of large corporations which occurred after the Civil War. Miller shows that the disruptive effects of industrialization occurred much earlier than previously supposed and therefore in a rather different social and political framework.

In the first chapter, entitled "Everything's Changed," Miller gives an impressionistic view of the transformation of America from a slow-paced agrarian society to a rapidly developing quasi-industrial society. He finds a definite break between old and new occurring in the 1830s; in this period a preindustrial society of farmers living in modest security begins to be contrasted with a society characterized by incessant excitement, one in which "Life consists of motion." Miller approvingly quotes Henry Cabot Lodge to the effect that "there was a wider difference between the men who fought at Waterloo and those who fought at Gettysburg or Sedan or Mukden than there was between the followers of Leonidas and the soldiers of Napoleon."

The passion for wealth and activity which has characterized Americans ever since the 1830s was the direct response to rapid urbanization, improved transportation, industrialization, new technological innovations generally, westward expansion and rising expectations. There is no question that the transportation revolution and the beginnings of industrialization and urbanization occurred in the period 1820 to 1850. Miller builds on George Rogers Taylor's conclusions to this effect and presents an intelligent discussion of the debate over the takeoff period of American industrialization.

The cultural focus that Miller gives to his analysis stresses the discontinuity produced by technological transformations which changed an agrarian society into an industrial society in a very brief period. The changes brought about by the successes of industrial and technological advances had an important impact, in turn, on the basic beliefs and attitudes of the population. Analyzing this process, Miller writes that "As American society changed, social cohesion was threatened. Industry, immigration, and expansion were creating a pluralistic society; yet many persons clung to a single-track vision of what the country should be. That the unfamiliar alarmed Americans is evidenced by the bitter attacks against such groups as Catholics, Masons, or Mormons." Material prosperity based on industrial expansion caused widespread apprehension. A contemporary complained that "A lover of the country cannot but regret to see that we are making such rapid strides in extravagance and luxury." The selfless heroes of the revolutionary generation had given cohesion to the immediate post-revolutionary period, but by the 1820s they were gone and national unity was threatened.

The result of these industrial developments, the uprooting experiences of mobility and the anxieties caused by the new distinctions based on wealth led to the paradox of romanticizing the past while dreaming of a glorious future. Miller, drawing on the work of Henry Nash Smith and Leo Marx, describes the early American attempt to create "the rural setting of the American factory [which] helped reduce the potential conflict between the world of Nature and the world of the machine." As one spokesman of the virtues of Lowell's new textile mills argued, "Manufacturing may innocently be inoculated on the agricultural system, without endangering the morals of the people." Like the religious revivalists, many of the propagandists believed that manufacturers were the key to the millennium, and the millennium could be achieved within the agrarian framework. But it became clear to perceptive observers that this kind of synthesis was not being achieved. Rather than denigrating the literary figures of the period who recognized this fact, Miller insists that "Those most sensitive to the blighting effects of industry and technology were the best artists and writers of the new age. More clearly than others, they recognized the conflict of values between America's romantic and utilitarian moods. To a man they leaned toward the romantic." Despite the warnings found in the writings of American romantic authors, however, most Americans began to assert the right of man to use the machine to dominate nature rather than attempt to establish industries in a rural environment which would in some mysterious way preserve the old values intact.

Miller is at his best in describing the response of the upper classes who are the product of the economic revolution of the age. Drawing on his previous study, *Jacksonian Aristocracy: Class and Democracy in New York, 1830-1860,* Miller asserts that the upper class was particularly anxious about its status in the changing social order. The result was a reassertion of the ideas of aristocracy in the midst of Jacksonian America. Democratic individualism, many of these people felt, would lead to anarchy and immorality; the solution was to reinforce class awareness through etiquette books which instilled class distinctions and appealed to social snobbery. There was widespread emphasis in the school and in the home on proper social behavior. Thus the members of the new wealthy class sought to distinguish themselves from the masses whom they had left behind. For Miller properly argues that Alexis de Tocqueville's description of social equality is extremely distorted (a point that Edward Pessen argued very convincingly at a recent session of the American Historical Association). For the laboring classes, Miller says, "the price of industrialization was increasing social stratification, alienation, and exploitation." Miller describes the depressed condition of the emerging laboring classes and the antagonism that developed in employee and employer relationships by the 1830s.

The antipathy of the wealthy and the workers appeared to be more a consequence of a preindustrial work ethic in conflict with the new order than of any thought-out critique of the underlying forces of industrialization. The workers did have their defenders, however. Well before Marx, an American trade union leader, John Ferral, argued that "the accumulation of the wealth of society in the hands of a few individuals is subversive of the rights of man." Other radi-

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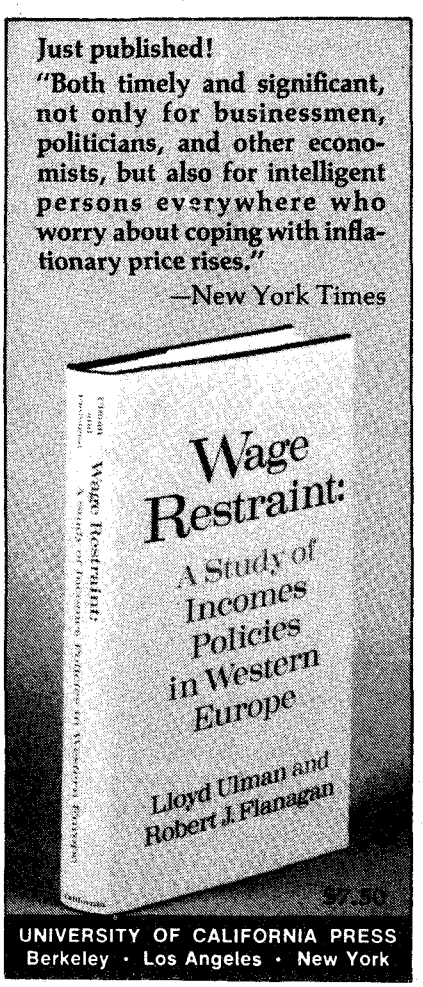
cal labor leaders expressed the view that as a class, wage earners had an interest distinct from others in society. This idea was in direct opposition to the prevailing notion held by Federalists and Jeffersonians, and later Democrats and Whigs, that there was a preordained harmony in society which everyone should try to re-establish.

Miller shows that conflict had become an important fact of political and social life in this period. Many people at the time noted that they were living in the midst of a revolution. As Michel Chevalier, a visitor from France, noted, the American political system "no longer works well. . . . Everywhere, the relations established by the old federal compact are unfitted to the new state of things." However, the key motivation behind the new nonideological parties of the 1830s and 1840s was avoidance of the conflicts represented by the major issues of the day: industrialization and economic growth, the tendency toward concentration, slavery, the treatment of the Indians, and the quality of public education. Indeed, this was not the age of the common man in political affairs. Miller concludes that it was not the age of reform politics, much less the era of Jacksonian democracy, and certainly not the age of egalitarianism. What, then, was it? Miller calls the period the "Age of Innovation" because the term encompasses the rapid changes of the age and the conflicting responses to it.

The major weakness of Miller's work is his use of evidence; as a synthesis of other studies of the period, his analysis is too impressionistic. Little data on economic and social factors—population growth, rate of economic growth, wealth-holding, stratification, or occupational figures—are presented, though Miller appears to regard such factors as fundamental in explaining the important changes and the responses to those changes by individuals, groups and classes. Miller, in fact, devotes considerable space to treating people's response to economic change; however, most of his sources are literary in nature.

Also, so far as the issues raised in this book are concerned, there is so little on the positive side of the balance sheet that a historian as sensitive as Miller finds himself trapped into sentimentally identifying himself with the protests against the emerging industrial order. Like the Romantic writers whom he quotes extensively, Miller sees no solution to the problem of resolving the clash between industrial and human values. He fails to appreciate those critics of society who agitated for change in the context of industrial society itself. This is in part because the consensus historians were so successful in denigrating those critics and dismissing them as Utopians that Miller has neglected to analyze their social thought in any depth. Had he been familiar with, or sufficiently appreciated, Aileen S. Kraditor's *Means and Ends in American Abolitionism: Garrison and His Critics on Strategy and Tactics, 1834-1850*, Miller might have sharpened his own critique of the social reform movements of this period and their potential power for initiating change. The experiments in cooperative living which flourished during this era were not usually anti-industrial, anti-machine or anti-scientific. For example, new technological innovations were readily adapted at the Oneida community, which prided itself on its trap factory, canning factory and other minor industries; its houses were heated by steam in the winter. Many of the early reformers argued that changes in institutions were necessary to "promote the great purposes of human culture." And as Miss Kraditor argues, abolition was an area in which these pre-Civil War radicals were rather successful in a limited way.

Today a similar reform movement has been obscured by liberal critics and a duped public who view the counter-culture movements as simply an indulgence of Romantic sentiments on the part of persons seeking to return to a primitive agrarian society. In some cases the charge is correct. Yet below the surface of much of this new protest is an evolving critique of industrial society which again calls for using the machine and technology in a conscious adaptation of man to his environment rather than subjecting all human activity to an uncriticized drive to produce. Although they believe that technology is essential if men are to be freed from the servitude of manual labor, most political radicals seek to transform society so that people no long-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IN THE HOUSATONIC VALLEY

Anton is the saint of the town. The Poles have their church
across from the grocery, and the food smells and the incense
and the steam of the manure by the hitching-posts out front,
is well-known. The little girls come
in their wide-brimmed chin-tied hats
and their blue stockings to secretly pull up
as they rise from kneeling, and in the pews they stare
at the backs of grown-ups or at the ceiling.
Darkness is up there, also down at the sides, where
the candles burn in choirs. Anton is above all
painted with gold and three fingers together
his face so sad and Jesus with him:
for sure he is a saint. If I were the painter,
I would dress him in rolled-up sleeves and pants,
bare-footed, bare-muscled-calves, and his hands
cut with fine cuts from the tobacco leaves,
with heaven made as cloud after cloud of pure
white tobacco netting, keeping the bugs off
while the men take a minute and have a drink.

Zona Silverstein

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er are pawns of the industrial system. These critics of contemporary society are particularly harsh in their denunciation of political and intellectual movements which fail to take into account the deep cultural and economic forces that mold the lives of men. In this light, perhaps Miller has made an important contribution to our study of American culture, past and present, in showing how the appeal of participatory democracy, moral equality and individualism (the primary underpinnings of the old Jacksonian mythology) can easily be used to mask fundamental forces which are intensifying inequality and degradation. The issue of the tactics for change, however, remains the critical problem for today's radicals as it was for the radicals of the pre-Civil War era. □

U.S.: The Next World Revolution?

WITHOUT MARX OR JESUS: The New American Revolution Has Begun. *By Jean-François Revel. Doubleday & Co. 269 pp. $6.95.*

GEORGE G. ECKSTEIN
Mr. Eckstein has contributed regularly to various German periodicals.

About a year ago, Charles Reich presented to us a dismal picture of American corporate society, a society, however, which he found doomed to be greened by a revolution set in motion by the young generation and precipitated by a change in consciousness which would, in time, cause our refractory political and social institutions to collapse from within. *The Greening of America* owed its phenomenal success in part to its optimistic message, in part to the fact that it expressed in greatly simplified form many accumulated ideas on recent social developments.

A few months later, there appeared in France a similarly successful book, under the catchy if none too appropriate title, *Ni Marx, ni Jésus*, written by Jean-François Revel, a political philosopher and columnist of the weekly *L'Express*, published by his political ally Jean-Jacques Servan-Schreiber. He takes a slightly different approach to the same general subject: "The new world revolution has begun in the United States," said the book's original subtitle—which was changed in the American edition, for reasons difficult to fathom, to "The New American Revolution Has Begun."*

That new edition also contains an "Afterword" by Mary McCarthy, useful insofar as it presents Revel's background and credentials to the American reader, but awkward when it becomes a book review and critique.

Revel wrote his book after several visits to the United States including one as late as 1970. It is above all a sharp polemic against the concepts of revolution and of America accepted by Europeans, and especially the French Left intelligentsia. In opposing those myths it stresses the new realities of revolution and America alike, and their intimate interrelation. It is full of provocative political ideas, merciless in its castigations of the illusions of the Right, Left and extreme Left, and while it has many points of convergence with Charles Reich's book, it avoids some of the latter's sweeping simplifications.

In brief, Revel's thesis is that a true revolution (which he defines as encompassing a thorough and permanent transformation of society) can only take place in the technologically most advanced society; that modern history has seen only one such revolution, the one that was fought out in England, the United States and France during the second half of the 18th century; that today American technology has clearly outstripped that of other nations; that therefore the revolution will succeed here or not at all; and that it has already gotten under way during the last decade.

To be successful, Revel says, a revolution must have developed the germs of a new social organization—economic, social, political, cultural—within the body of the old as well as the preconditions for a freer development of the individual than is possible under the old system. The cultural aspects of the crisis, in particular, can only arise within the upper class itself—hence, in contrast to Marxists, Revel sees the ferment among the American student elite as a positive sign. And in the method of "confrontation," originally developed by Martin Luther King, he sees a truly new and original strategy of revolutionary struggle, one adapted to the conditions of our complex society.

* There are other such gratuitous changes in an otherwise good translation by J. F. Bernard, causing at times a flattening of Revel's frequently vivid polemic style, at times a change of meaning, e.g., when the "generous killings of political adversaries" (in European countries that point a finger at recent U.S. assassinations) are transformed into vague "political hatreds."

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In separate chapters he shows why this revolution did not and cannot occur in the Communist world, in Western Europe, in Japan or in the Third World. He sees the absence of political democracy in the Communist countries as the ultimate source of their economic inefficiency and of their inability to develop a "socialism with a human face":

> The purpose of the second world revolution is to create real equality among men, and to give to men the political means to decide for themselves on the great matters affecting their destiny. Therefore the concentration of all power—political, economic, military, technological, judicial, constitutional, cultural, and informational—in the hands of an oligarchy or even in certain cases (Stalin, Tito, Castro) of an autocracy ["monarchy" in the French original] must be the method least likely to lead to such a revolution.

Thus, while there may be a way from freedom toward socialism, there is none from an unfree "socialism" to freedom.

As for Western Europe, it is lagging behind or looking backward. It lags behind the United States in technology and advanced research, and in cultural and political innovation. Whether they lean toward capitalism or Marxism, Western Europeans at best hope to "discover a little personal variant in the application of a model the basic concept of which escapes them." But mostly, especially in France, they look backward to old models, or to irrelevant foreign ones: to God and *la gloire*, or to the Paris Commune, Marx, Lenin, Mao, Che, et al. Addressing a French public, Revel attacks these dwellers in the past: a de Gaulle diverting scarce national resources to furthering the illusions of big-power politics; a Left afraid of power, preferring "caviar" when only "spaghetti or potatoes are on the [political] menu"; revolutionary intellectuals who look down on the British Labour Party or the German Social Democrats while forgetting that "in the phrase 'to make a revolution' the operative term is 'to make.'" The political positions of both sides ignore reality equally. And the large Communist parties of France and Italy have created a particularly stifling situation. Theoretically for the revolution, in practice against it, at the same time they prevent a true revolution *and* the formation of an effective opposition party with a chance to come to power within the system.

To expect the revolution to come from the Third World, too, is to cultivate a backward myth. Clearly, such a revolution could never serve as a model for industrially developed countries—for the revolutions of the Third World are themselves underdeveloped. But in any case, the only realistic choice these countries have is one between two imperialist systems—aside from their own mini-imperialisms. Then, most of those countries are ruled autocratically, "which leads us into the vicious circle of incompetence-dictatorship-corruption-*coup d'état*-purge-reinforced dictatorship-greater incompetence-greater underdevelopment." Finally, their urge to find "roots" in tribalism, or in ancient religion and culture, acts as a brake against modernization and against any effort to reduce overpopulation. It leads to xenophobia and nationalism which are no more constructive for being called Socialist. Actually, the lamented old cultures have usually been a prison of uniformity for their members.

In contrast, Revel sees in America a start toward a new diversity of living made possible by high productivity and a more even distribution of wealth. This diversity is only one of the aspects which he sees ignored or distorted by the anti-Americanism of the European Left (and Right). He proceeds to demolish some of their blatant and spiteful misconceptions about the United States, echoed by our own radical fringe shouting "Fascist Amerika," and he asks: "Why is it that the United States has always been able to preserve its democratic institutions and avoid fascism? And why is it that totalitarian regimes occupy the major part of European history in the twentieth century and most of European territory today? In other words, we are being asked to believe that the causes of fascism have always existed in America, and that they are becoming more pronounced today; but, by some mysterious process, fascism itself always appears in Europe, and never in America." Revel sees the hidden reason for the anti-Americanism of both Left and Right in the fear of the changes and upheaval which are forever taking place in American society and which it transmits to the rest of the world—i.e., ultimately in the fear of revolution.

He emphasizes (perhaps overemphasizes) the significance and the achievements of the Martin Luther King phase of the civil rights movement, the ingenuity of Cesar Chavez's organizing drive, of students and blacks finding new forms of social action adapted to our society —a society, not so incidentally, where the relative independence of the mass media and the benign role of the law create possibilities unknown elsewhere in the world. He draws attention, finally, to rapid changes in attitudes, the rise of a counter culture.

If his evaluation of these things must seem at times a bit too sanguine to an American observer, it is still true that this country is far ahead of the rest of

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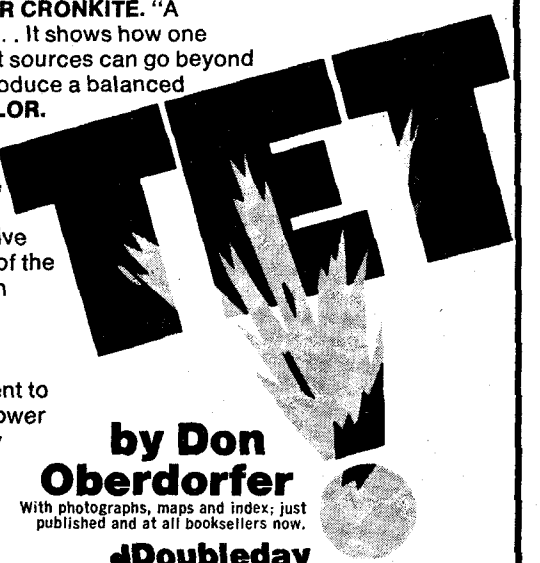

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the world, not only in technology and living standards but also in civil liberties, and in freedom of expression and social action. Where I would differ most with Revel is in his evaluation of the American New Left today. He seems to see the original movement still alive, and he is insufficiently critical of its degeneration into splinter sects and into grouplets of violent romanticists. Indeed, he is much less critical of these than he is of their European counterparts. And, like Charles Reich, he at times seems to underrate the negative, anti-social aspects of the counter culture.

But these reservations do not really invalidate his major point: that "the U.S. is the prototype-nation where the change of political civilisation seems to be going on right now," and from which it will spread "by a sort of political osmosis." In America, Revel stresses, much of the change can be achieved legally, given the flexibility of the legal system—a head start for any revolution. Still, in contrast to Reich, he does not take its success for granted.

There is, of course, a serious semantic problem in Revel's use of the word "revolution" in a sense very different from the usual one of abrupt and possibly violent change of socio-political power. Only at the very end of the book, in the "Author's Note to the American edition," and in answer to objections raised by Mary McCarthy in her Afterword, does Revel make clear that one of the key concerns of his book is to *modify* the concept of revolution and to make it applicable to modern "societies that are too complex, and insufficiently hierarchical and centralized, to be changed overnight, by a single coup and in a single direction." And it is in the "crisis [which] has become America's second nature" that he sees the ongoing revolution expressed. □

BELLADONNA

The night I met you
I had the black shirt on
I had the ice pick in my boot

I climbed the tree buck naked
I swung out on a limb

I swam all the way
Under the water
With the knife in my mouth

Like a song of hog blood
Footprints you cannot track

A song that comes apart
Like a rosary
In the back of a church

O bootblack the night I met you
I quit shining shoes

Frank Stanford

Selling Us the Brooklyn Bridge

ENVIRONMENTAL ECONOMICS. *By Thomas D. Crocker and A. J. Rogers III. Dryden Press. 150 pp. $5. Paper $3.*

STEVEN D. ANTLER
Mr. Antler, who has done research in environmental economics, teaches at Memorial University, Newfoundland.

In the age of one-dimensional man, when the medium becomes not only the message but also a weapon, one might have guessed that sooner or later a book concerning the pollution issue would appear printed on "reclaimed paper." *Environmental Economics* is that book. Reclaimed paper, we are told in an opening note, isn't uniform in color from page to page. But, the note continues, "as with so many other aspects of the pollution problem, you may have to readjust your standards a bit if we are going to lick the problem." Also, reclaimed paper "is *more* expensive than regular book stock." Unlike regular stock, however, it doesn't pollute the environment.

The message of *Environmental Economics* is one that has been peddled by big business for quite some time: people, not business, are the primary source of pollution. Crocker and Rogers' exercise seems to be an attempt to exploit the growing market for "relevant" supplementary teaching aids in the intermediate level undergraduate economics courses. The book presents economic theory sufficiently traditional, and political considerations that are sufficiently conservative, to be acceptable to the majority of young, "conscientious" economics professors. Publishers are beginning to be aware of the dilemma young faculty face today: how to stay up with the times, how to teach "relevant" material and, at the same time, how to continue feathering their promotion-and-tenure nests.

The book is a highly commercial property. The opening note immediately provokes the student's interest; the figures are interesting and easy to read; the writing is pure 1950s fraternity-man style, as is the politics. *Environmental Economics* attempts to lay the theoretical basis for a political proposal to deal with pollution, which will inevitably be put forward by conservatives. The proposal is no less than the transfer of the public environmental domain into private hands.

The case for this proposal is made through proof by example. The economic problem is demonstrated by a professor who hates to shower—and thus "pollutes" the classroom with his body odor—and his students, who suffer from this pollution. (Parenthetically, the reader can easily visualize this offensive professor's long hair, beard, and "Free Angela" button. Most of the politics in the book is, as in the opening note, subliminal.) The solution to this particular "pollution problem" is wrapped up in defining property rights to the air in the classroom. Clean air in the classroom is now a scarce commodity and people—even students—are usually willing to pay a certain price for a certain quantity of scarce goods. The professor, on the other hand, dislikes using deodorant but likes receiving money. The preconditions for trade, then, exist:

> with perfect knowledge, certainty, and free market operations, trade will take place and students will start "buying off" the prof, that is, paying him to increase his use of deodorant. This process will continue until the price of control is equal to the price [students] are willing and able to pay for that level of control.

If property rights to the air were defined —i.e., if students and the offensive faculty member were able to bargain with each other, to offer each other money in exchange for the legitimate right to use the air as they respectively see fit, the free market would be able to solve the pollution problem in a way satisfactory to both parties.

If the reader manages to get through the many cheap shots at radicals and campus unrest, he finds a general application of this principle. Since firms "use up" clean air (or water, or what have you) in the process of production, there should be a technically derivable relationship between the air "used up" by the firm and the revenue value of the goods produced by the firm. If there exist technically possible incremental trade-offs between "more" polluting methods of industrial production and "less" polluting methods, one can derive a firm's "demand-for-air" curve in much the same way as Alfred Marshall derived the firm's demand-for-labor-curve, and demand-for-capital curve. In a fertilizer factory, for example, each bag of fertilizer produced is responsible for a certain amount of the smoke and chemicals the firm dumps into the air; each bag of fertilizer brings in a certain amount of revenue to the firm. There is a specific relationship be-

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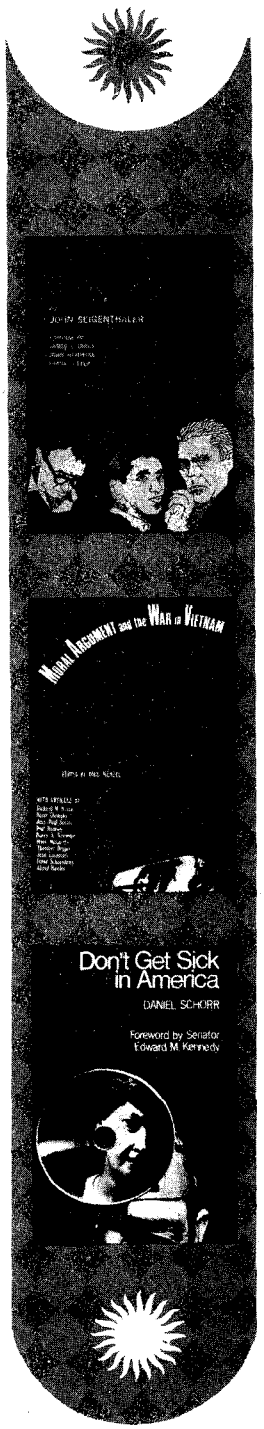
tween the amount of air polluted by the firm, and the number of bags of fertilizer it produces, and also a specific relationship between the number of bags of fertilizer produced, and the revenue earned by the firm. From these two relationships can be derived the precise value to the firm of each cubic foot of air it pollutes. If the firm is offered a certain amount of money in exchange for an agreement to pollute less—and the agreement is legally enforced—there is no economic reason for its continuing to pollute the atmosphere, since its revenue is maintained through the agreement. Consumers, on the other hand, are beginning to recognize that clean air is becoming a scarce commodity. There is no *a priori* reason to assume that individuals would not be willing to pay for a cleaner environment; to pay "more" for a "more clean" environment, and "less" for a "less clean" one. The possibility of trade, through the free market, exists. Consumers, like the students in the earlier example, have a demand-for-clean-air schedule, and manufacturers' demand-for-air schedules, when inverted, are nothing more than *supply*-of-clean-air schedules.

One's response to this line of reasoning might be that of course manufacturers will respond to bribery. But why, it might be asked, should consumers have to pay for air which is rightly theirs anyway? The answer, according to Crocker and Rogers, is that consumers as well as producers have benefited from pollution. Prices have been lower, they say, than they would have been had manufacturers been forced to cut back pollution some ten or fifteen years ago. At any rate, this normative question is easily brushed aside if the government requires all firms and individuals who pollute the atmosphere to buy "rights" to the quantity of air they ruin. Environmentalists, citizens, consumer groups can also buy rights to air, and *not* pollute the air they have purchased rights to.

E. J. Mishan, in his very thoughtful essay *Technology and Growth: The Price We Pay* (Praeger) suggested that market solutions to environmental problems are impossible, simply because there is no market for alternative environments. Crocker and Rogers (without specifically acknowledging it in the text) take Mishan up on this point, suggesting that the problem can be solved if government creates an air exchange—like a stock exchange—and then lets the free market solve the problem. Such an "air exchange" would be, in effect, a market for alternate environments. The final level of pollution would be exactly set by what individuals are willing to pay for a clean environment.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This proposal, of course, is based upon a myopic view of the pollution phenomenon. Pollution does not make products cheaper; prices are administered, not set by cost of production. Pollution lowers manufacturing costs (and thus increases profit margins) by transferring these costs to the poorest members of the community. All citizens suffer from air pollution, but the poorest suffer the most. The richer a man is, the more he is able to escape pollution, driving from the suburbs to an air-conditioned office, in an air-conditioned car, which leaves most of its wastes in the inner city. Pollution demonstrates the fundamental problem foreseen by Ricardo, and finally systematized by Marx: how to maintain an inequitable income distribution in the face of a diminishing stock of natural resources; how to stretch out the life span of a system that is inherently incapable of generating income sufficient to buy back what is produced; how to compensate for structural contradictions in the system by continually increasing the economic gap between the rich and the poor. The costs of air pollution are not borne equally by all members of society, nor are the benefits distributed equally.

Essentially, pollution is a mechanism which redistributes income from the poor to the rich.

At first glance, Crocker and Rogers' "air exchange" proposal reads like science fiction. It should not be brushed aside as nonsense, however; in principle, it is precisely the same as the Valuable Mineral Acts, the Timber Acts and all other legislation in American history which gave over into private hands large chunks of the American continent.

Judged on its own terms, *Environmental Economics* is a poor book. Its style is far too cute, given the serious problems it attempts to discuss. Its economics are basic at best, and error-ridden at worst. The authors assume smooth technical substitutability as between polluting and nonpolluting production processes, while manufacturers argue—practically every other night on network news—that smooth technical substitutes are not available. If the "air market" were instituted under these circumstances, all it could accomplish would be to pay manufacturers the market price of a certain number of cars, for example, in exchange for not producing the cars and therefore not polluting the atmosphere. The incentive for finding nonpolluting technology would be completely eliminated. Why risk investment in new technology, if growth and revenue can be maintained with present technology?

In ignoring the necessity to take into account present technology, and in failing to notice the role the pollution phenomenon plays in the distribution and redistribution of income, Crocker and Rogers make serious professional errors. These are not "value-free," purely "scientific" errors committed somewhere in academic outer space. Rather, they are errors which serve the interests of large corporations, government officials and all those who have something to gain from prolonging the life span of the American economy's basic contradictions. If *Environmental Economics* is presented as "scientific truth" to undergraduate classes—and in many cases it will no doubt be presented in this fashion—the book is clearly no less than a political weapon for the right wing. □

FILMS

ROBERT HATCH

To make a gentle picture about South Vietnam today is an extraordinary ambition; *Hoa Binh* is an extraordinary picture. It is about a little boy named Hung (Phi Lan) and his baby sister who, against all probability, survive alone in the city and suburbs of Saigon at war. The children's father, a pedicab driver, has slipped off to the Vietcong; their mother dies of a carcinoma in the American infirmary. A wicked aunt scorns them and slaps them and pockets the money she has been given to feed them. With his sister on his hip, young Hung (I would guess he is 10) sets off for the docks and streets of the city to earn a living for them both by unloading junks, shining shoes, hawking papers and begging along the café tables.

Since we all know what befalls abandoned children in a land at war, the Damocles suspense of *Hoa Binh* becomes almost unendurable. But the sword never falls, and in the last scene Hung breaks into a run from far down the street and flings himself into his father's arms. Just above, I mentioned a wicked aunt; that is the clue: *Hoa Binh* is a fairy story. By telling it so, the French director Raoul Coutard (his wife is Vietnamese) accomplishes two purposes: he reminds us that, while the purpose of war is to kill, the purpose of art is to celebrate life; and by extending to his young protagonist a compassion that is as arbitrary as a magic wand, he makes us guiltily aware of the extremes to which art must go if it would celebrate life in contemporary Vietnam. A bomb explodes in a neighborhood theatre and the audience vomits out to die in the street. Hung is crouching in the midst of the carnage, protecting his sister with his body. Suddenly he leaps to his feet and, unscathed, dashes away with her. This is an insult to our expectations and an occasion for acknowledging what our expectations have become.

Hoa Binh begins with a child's voice asking, in French, "what is peace?"; in the course of the film men on both sides are heard to say that the war must go on—if need be for twenty, thirty years—until right prevails. Who will then answer the child's question? The opening ten minutes of the picture make the nature of helicopter war vivid beyond anything I have hitherto seen. American soldiers are everywhere, but the children through whom one absorbs the littered, exhausted fabric of Saigon are very small, and for the most part the very large intruders are evident as heavy shoes and muscular calves. Coutard is not "for" the Americans or "against" them; indeed, when they move into the action they are benign or neutral. Hung pays them little heed, since it is through his own people that he must hope to survive. They are good or bad, as people tend to be; the Americans are a neutral force, impersonal. At one point, Hung hears rumbling in the sky and asks his mother whether a storm is approaching; the look on her face is not easily forgotten.

Like the great Italian directors after World War II, Coutard has found his cast in the populace. A few of them are stiff with amateur sense of the occasion, but he has been triumphant with the principals. The father and mother speak almost entirely with their eyes and what they say is simply what life has been like for them these past ten years and more. I suspect that Coutard, who must be a director of surpassing tact, has told them no more than to show what they remember.

The boy Phi Lan is the miracle of the film. He is a perfectly real Vietnamese child, straight-limbed, quick as a lizard, with a face that responds like clear water to hopes and rebuffs. And at the same time he is Jack the Giant Killer, the youngest of the princely brothers who performs the impossible task and saves the lives of them all. He wears his father's hat; it makes him invulnerable. In his presence, it is impossible not to believe, at least a little, in fairy tales. We have not yet sunk to the point where we can endure the alternative.

Because of vacation, I am late seeing some of the films; Joseph Losey's prize-winning, crowd-pleasing *The Go-Between* convinces me that I am back

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at work. I dislike being bullied with big names: in this case, Julie Christie, Alan Bates, Margaret Leighton, Michael Redgrave (screenplay by Harold Pinter from a novel by L. P. Hartley). I have respect for the talents and/or comeliness of all those mentioned—with the tentative exception of Mr. Hartley, whose fiction I have not read—but it is undeniably disagreeable to see so much prestige rattling around in balderdash. And costume balderdash at that—all soft focus and parasols and stately homes of England, with portents of black magic and snippets from *Lady Chatterley* to give you goose pimples.

I cannot go into the plot, which involves a 13-year-old boy (Dominic Guard) who shuttles between the daughter of the big house and the tenant farmer across the fields, carrying messages whose significance he only dimly understands; and who is witness to a hayrick scene (Why a hayrick? The farmer has a bed) so shattering that he grows up to be a pudding-faced Redgrave in a bowler hat.

Despite such coy bits as having the boy fall out of a hayrick and prophetically wound himself, or putting Mercury's traveling hat on his head when he is about his sorry business, or having him know the special properties of deadly nightshade, not a foot of the film persuaded me. As a story, it is possible enough, since almost any story is at least possible. But as characterization, it seemed to bear no conceivable relationship to the deportment of the country gentry at the time of the Boer War. I don't doubt that this cast is perfectly capable of acting like ladies and gentlemen if the director knows what such acting entails. Lacking that instruction, they all seem to be got up in borrowed clothes for the purpose of aping their betters. If I am now told that such was Mr. Losey's egalitarian intention, I shall maintain that it is an oafish way to demonstrate the brotherhood of man. □

MUSIC / David Hamilton

The temptation to categorize Leonard Bernstein's *Mass* (which played at the Kennedy Center in Washington, September 8-19, and will probably be presented in New York later this season) is very great. After all, there is in Western music no major genre more historically sanctified than the mass—but Bernstein's purpose is obviously far from providing a service mass, and there are many specific indications that he abjures the tradition leading from Machaut through Bach, Beethoven, and beyond—in contrast to, say, Britten's *War Requiem*, which explicitly and internally acknowledges the tradition stemming from the requiems of Mozart, Berlioz and Verdi. To accept the composer's designation of *Mass* as a "theatre piece" is hardly a capitulation to the intentional fallacy, but merely acknowledges a self-evident truth, confirmed by the work's unarguable professionalism and craftsmanship, as well as its multilayered theatrical structure. Conventional mass settings, even those, such as Beethoven's, that patently are not intended for use in a service, may indeed be complexly structured, but the structure is primarily musico-textural elaboration of a continuing doctrinal tradition. Bernstein, on the contrary, has imposed a new and quite distinct theatrical progression upon the fundamental Latin texts, and has also interpolated new texts (credited to the composer and Stephen Schwartz). Because of this latter feature, one might be tempted to pigeonhole it as a "troped mass" (in the medieval liturgical sense), but the interpolations are as much a "counter-mass" as an elaboration of the existing liturgy.

The category of "opera" certainly fits Mr. Bernstein's latest work, but is only trivially illuminating, given the current elasticity of the term. For the moment, then, I shall invent a term that suggests the musical and theatrical interactions at work here: *Bildungsmesse*. For *Mass* is most immediately concerned with the religious and ritualistic education of a young man—an education embodied in his celebration of a mass during which he becomes increasingly aware of the ritual's impotence to deal with the needs of his congregation. At the climax of the service, with the entire company—not only the congregation but also the acolytes and choir—demanding peace ("*Dona nobis pacem*"), he rejects the ritual (and, by implication, the entire organized structure that it represents) and his mind snaps; he smashes the monstrance and the chalice, discards the progressively more ornate vestments he has donned during his ascent (literally, for the central feature of the setting is a staircase leading from the orchestra pit to a height above the choir ranks at the back of the stage), and staggers incoherently down into darkness. After a full stop, a choirboy takes up a strain of praise, developed canonically by the entire company—and eventually including the original Celebrant. In effect, a communion of love replaces the destroyed one of bread and wine.

Much has been made of the stylistic disparity of the music, so that it needs to be pointed out that Bernstein's use of styles is in fact carefully controlled, and specifically meaningful to the drama's progress. The Celebrant is introduced with a folk-song idiom, and his music retains that character throughout; for his association with the boys' choir, which appears sporadically and functions always to revive his flagging spirits, the composer uses a more dance-like style. The core of the congregation is a street crowd—humanity in microcosm—from which come the voices of protest, using the languages of popular song, including rock. And a red-robed choir, seated on rising benches at the back of the stage, is the primary articu-

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lator of the doctrinal texts from the liturgy. Also on stage are a band, used variously to support the choir and some of the popular numbers (e.g., as when a wind quintet is pulled out to accompany a sort of torch song, *Thank You*, that tropes the *Gloria*); two rock groups (used in alternation and in combination during the counter-confession), and a group of acolytes from the Alvin Ailey American Dance Theatre.

This brief categorization can hardly suggest the skill with which the various elements are dovetailed, on musical, textual and choreographic levels. Far from being a hodgepodge, the score in all its different stylistic guises is shot through with integrative devices (I am indebted to the composer for an opportunity to examine the score, and for explication and clarification of some important details). Not surprisingly, Bernstein's rock songs are more sophisticated than all but the best of the commercial variety, and at all points during the work he maintains a remarkable level of consistency. It is a feat of compositorial virtuosity that should not go unrecognized; nor should the fact that an uninterrupted musical work of some hundred minutes, not one of them boring, is a considerable achievement in this day and age. Under the rubric of the "Epistle," for example, not only New Testament "prison letters" are read but also some contemporary ones, leading to a song, *The Word of the Lord*, derived from a Chilean chant but here spread out in an "art-music" way over a harp-trill accompaniment and through a series of modulations, to haunting effect.

Perhaps partly to maintain a degree of textural consistency, the "serious" material is rather less dense than one would expect in the concert hall, reaching its greatest concentration in an orchestral meditation following the *Gloria*: a passacaglia on the twelve-note "row" that appears in the finale of Beethoven's *Ninth Symphony* (m. 730, to the text "*Ihr stürzt nieder, Millionen?* . . ."). This piece of material is used pointedly later on, in the Celebrant's "mad scene," which is built from verbal and musical reminiscences and puns (as indeed the entire episode is a pun, for instead of bread, a mind is broken under the rubric of "Fraction").

In short, *Mass* utilizes stylistic multiplicity for something rather more than shock or novelty effect, and is in fact remarkably free of the self-conscious search for musical novelty that is so troublesome and debilitating a feature of the present scene. Its subject matter —broadly, the crisis of faith and, more particularly, that of the Catholic Church —is very "now," but that hardly detracts from the achievement of embodying the crisis in a fascinating and thoroughly professional work of musical theatre. The physical production and musical execution are almost consistently superlative (Gordon Davidson is the director, Maurice Peress the conductor), although I regret the need for voice amplification, which creates tangible difficulties of text comprehension as well as sonic distortion. There will be a recording soon, but I would not recommend forgoing the theatrical experience. □

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This moment, as you think of him,
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Something in the nation's sated gaze
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Like any ancient leader in the conspicuous
Sweat of conscience. Does he catch the delicate
Scale of the chill Castalian spring, and hear
The old cries of fright and warning?
Citizens of the Republic, be quiet.
Oracle, Oracle, what do you say,
Psyche from the purple fumes of long ago?
By the dark light of time he stares
From pit of brute antiquity up up
To top of the bomb falling, and endures
Lament and accusation of all the wars,
And sees how the Pythian on her stool
Strikes at herself and shakes.
Oracle, Oracle, what do you say?
Well, what did she say to them all,
Heroes, nobles of fate, benders of time?
Oh, gas and sacrifice and ferocious hope . . .
Poor Mr. President, what are you waiting for?
Bury your dead. Bring the other bodies home.
He stands. He prefers to sit.
He reaches for a drink. And at his back he hears
The telephone from Delphi sadly ringing
And cries, What bell is that?

Hildegarde Flanner

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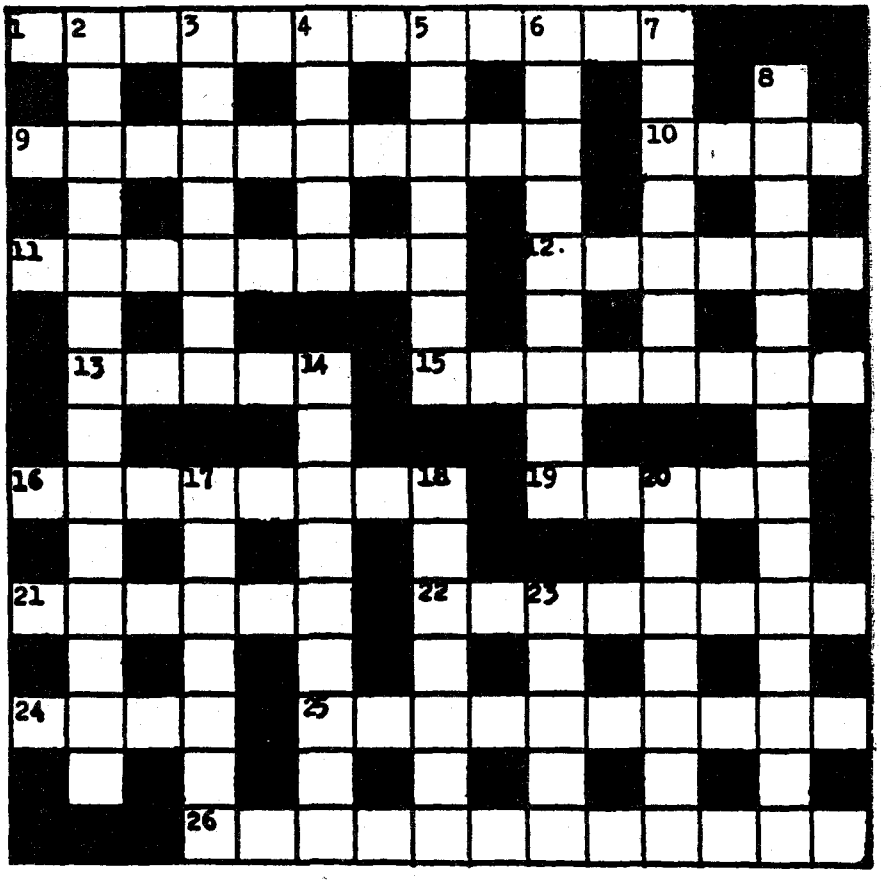
Crossword Puzzle No. 1410

FRANK W. LEWIS



ACROSS

1 Give a military-type address, with an article on the decay of drug handlers. (12)
9 There's one standard about the outfit supplying water to the land! (10)
10 Plenty of yen if you have one, despite the sensation of irritation. (4)
11 Stop the train—at dusk, traditionally. (4,4)
12 When I return in a different case to a stratagem, take advantage of it. (6)
13 Made 25, being only human. (5)
15 Spirits with the bad sort inside, but deliveries are made from here. (8)
16 Bird associated with the beginnings of communism? (8)
19 Probably also dammed, if this. (5)
21 There'll be seafood around in the end. (6)
22 It's a stem of misleading knowledge if one does. (8)
24 Sound assembly to apportion by measure. (4)
25 A sort of bare supply, getting away from the normal course. (10)
26 Walker isn't exactly wide-awake! (12)

DOWN

2 Six shapely faces, possibly because "Le Pill" appeared. (14)
3 With your arm out, it's not a good idea to be this happy. (7)
4 Possible inspiration of 25, when brainless. (5)
5 Foreigner, alternatively one who transfers property. (7)
6 Where they go in like a painter, southeast by south. (9)
7 Not supposed to cause a fall, however, when on foot! (7)
8 They should be convenient lodging places. (14)
14 The wall is rather thin, but you'd find gimp a hard thing out of which to make it. (9)
17 Turner's version of V. S. Lewis. (7)
18 Particular state of mind with a thing painters should know. (7)
20 Summer might do it again! (7)
23 Cultivated sort of brush? (5)

SOLUTION TO PUZZLE NO. 1409

ACROSS: 1 Rough sailing; 10 Wheeler; 11 Suction; 12 Fades; 13 and 24 One for the money; 14 Redeemable; 16 Drab; 18 Hews; 20 Denunciate; 23 Syndromes; 25 Timed; 26 Opinion; 27 Acheron; 28 Gerrymanders. DOWN: 2 Overdid; 3 Galoshes; 4 Surrogate; 5 Issue; 6 Inchon; 7 Glitter; 8 Two for the show; 9 Interbreeding; 15 Louisiana; 17 Scotched; 19 Winning; 21 Armorer; 22 Artier.

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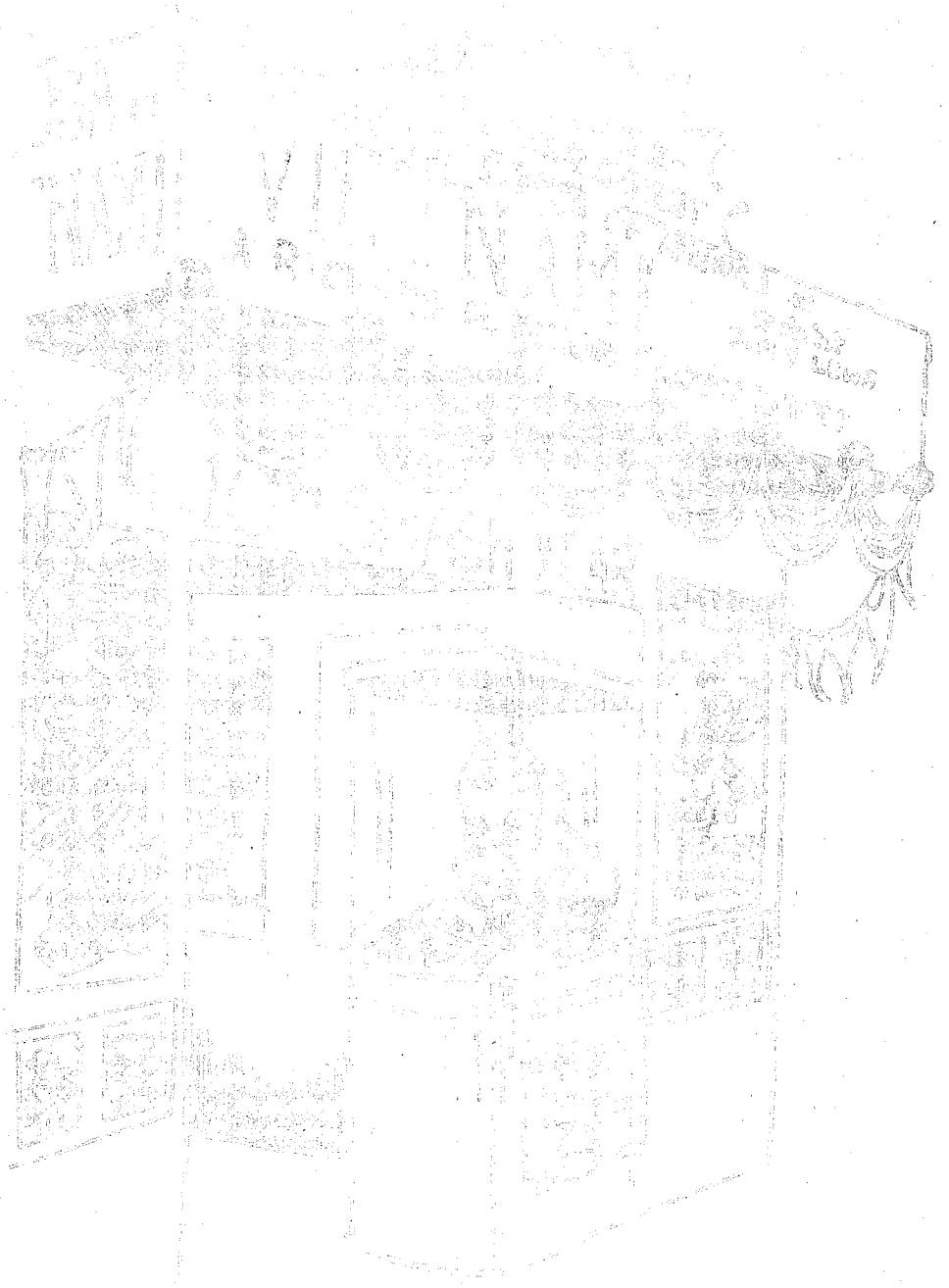

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